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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE, PETITIONER,

vs.

THE STATE OF GEORGIA

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE
OF GEORGIA AND TO THE SUPREME COURT OF THE STATE OF
GEORGIA**

PETITION FOR CERTIORARI FILED DECEMBER 10, 1951

CERTIORARI GRANTED MARCH 3, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No.

MARION W. STEMBRIDGE, PETITIONER,

vs.

STATE OF GEORGIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF GEORGIA AND TO THE SUPREME COURT OF
THE STATE OF GEORGIA

INDEX

	Original	Print
Record from the Superior Court of Baldwin County, State of Georgia	1	1
Affidavit of Frank O. Evans	3	2
Marion W. Stembridge	7	5
Baldwin Martin	9	7
Carlton Mobley	11	9
Marion Ennis and James M. Watts, Jr.	12	10
J. E. Jones	14	11
Report of the F.B.I.	16	13
Reference to transcript of evidence on original trial	18	14
Judge's certificate to bill of exceptions	19	15
Exhibit "A" to extraordinary motion for new trial—		
Transcript of evidence in original trial	22	15
Testimony of Richard Lee Cooper	23	15
Johnny Cooper	31	22
Mary Jane Harrison	70	51
George Harrison	108	79

Record from the Superior Court of Baldwin County, State
of Georgia—Continued

Exhibit "A" to extraordinary motion for new trial—

Transcript of evidence in original trial—Continued

Testimony of—Continued

	Original	Print
Eugene Ellis	124	91
J. E. Jones	131	96
T. A. Maddox	174	128
S. L. Terry	175	129
Defendant's statement	194	142
Testimony of U. S. Baldwin, Jr.	204	151
Louvenia Cooper	206	152
Ross Joinder	229	170
Eugene Ellis (recalled)	230	170
S. L. Terry (recalled)	234	173
Judge's certificate to transcript	235	174
Clerk's certificate (omitted in printing)	236	
Extraordinary motion for new trial	237	175
Exhibit—Statement of Mary Jane Harrison	241	178
Exhibit—Affidavit of Frank O. Evans	244	180
Exhibit—Affidavit of Marion W. Siembridge, Marion Ennis and James M. Watts, Jr.	246	181
Exhibit—Affidavit of J. E. Jones	247	182
Exhibit—Affidavit of J. M. Murphy	250	184
Exhibit—Affidavit of D. M. Cox	250	185
Exhibit—Affidavit of Foreman of Jury, T. E. Owen	251	185
Exhibit—Affidavit of Juror, W. A. Ivey	253	186
Exhibit—Affidavit of Juror, B. F. Anderson	255	188
Exhibit—Affidavit of Juror, H. E. Taylor	256	189
Exhibit—Affidavit of Juror, O. D. Horton	258	190
Exhibit—Affidavit of Juror, W. D. Bone	260	191
Exhibit—Affidavit of Juror, A. W. Layfield	262	193
Exhibit—Affidavit of Juror, Roy S. Alford, Jr.	264	194
Exhibit—Affidavit of Juror, T. H. Ennis	265	195
Exhibit—Affidavit of Juror, W. R. Torrance	267	196
Order re extraordinary motion for new trial	269	198
Order overruling extraordinary motion for new trial	270	199
Clerk's certificate (omitted in printing)	271	
Proceedings in the Court of Appeals of the State of Georgia	272	199
Opinion, Townsend, J.	272	199
Judgment	277	203
Motion for rehearing	278	203
Order denying petition for rehearing	290	211
Notice of intention to file certiorari	291	211
Proceedings in the Supreme Court of Georgia	291a	212
Application for certiorari	291a	212
Order denying certiorari	291q	225
Notice of denial of certiorari	292	225

	Original	Print
Remittitur	293	225
Application for stay of remittitur	294	226
Order staying remittitur	295	227
Motion to amend record filed in Court of Appeals of Georgia	296	227
Order of Court of Appeals of Georgia amending record	299	229
Clerk's certificate	302	(omitted in printing)
Order allowing certiorari	303	231

[fol. 1]

**IN SUPERIOR COURT OF BALDWIN COUNTY,
STATE OF GEORGIA**

BILL OF EXCEPTIONS

Georgia, Baldwin County, to the Court of Appeals of Georgia:

Be it remembered that on the 19th day of July, 1949, at the regular July term, 1949, of the Superior Court of Baldwin County, before Honorable George S. Carpenter, Judge, then and there presiding, there came on for trial the case of the State of Georgia against Marion W. Stembridge; the same being an indictment wherein the said Marion W. Stembridge was charged with the offense of murder.

Be it further remembered that after evidence had been introduced and both sides had closed, the jury returned a verdict finding the said Marion W. Stembridge guilty of voluntary manslaughter.

Be it further remembered that said defendant in regular course duly filed his motion for a new trial and said motion was denied by the Judge of the Trial Court; the judgment overruling his motion for a new trial was appealed to the Court of Appeals of Georgia and the Court of Appeals affirmed said judgment; a re-hearing on said case was denied by the Court of Appeals of Georgia; said case was then certiorated to the Supreme Court of Georgia and the decision of the Court of Appeals was affirmed.

Be it further remembered that on the 15th day of January, 1951, the defendant filed an extraordinary motion for new trial on said case in the Superior Court of Baldwin County, Georgia on the grounds of newly-discovered evidence and rule nisi was issued by the Honorable George S. [fol. 2] Carpenter, Judge of the Superior Courts of Ocmulgee Circuit for C. S. Baldwin, Jr., Solicitor-General of the Ocmulgee Circuit to show cause on the 10th day of February, 1951, why said motion should not be granted.

Be it further remembered that at the hearing on the extraordinary motion for a new trial after which hearing

all evidence was introduced in the form of affidavits and other documentary evidence the Honorable George S. Carpenter overruled said extraordinary motion for a new trial by an order dated March 1, 1951, to which judgment of the court overruling said extraordinary motion for a new trial, plaintiff in error then and there excepted, and now excepts and assigns the same as error.

Marion W. Stembridge names himself as plaintiff in error herein and the State of Georgia as the defendant in error.

And now comes plaintiff in error on this 16th day of March, 1951, and within the time prescribed by law and presents to the Honorable George S. Carpenter this, his bill of exceptions, and asks that the same may be signed and certified in order that said case may be carried to the Court of Appeals of Georgia, so that errors herein alleged to have been permitted, may be considered and corrected.

Plaintiff in error herein sets out the following affidavits that were offered in the evidence at the hearing on said extraordinary motion for a new trial:

[fol. 3] AFFIDAVIT OF FRANK O. EVANS

Georgia, Baldwin County:

Personally appeared Frank O. Evans, who, having first been sworn, deposes and says:

1. I am a practicing attorney. I reside in Milledgeville, Georgia. I represented Marion Stembridge in the case of the State vs. Marion Stembridge wherein he was charged with the murder of Emma Johnkin. I participated actively in the trial of said case.

2. I have read the affidavit of J. E. Jones, investigator for the Georgia Bureau of Investigation, which is attached, to the extraordinary motion for a new trial in this case, and I have likewise read the affidavit given by the said J. E. Jones under date of January 24, 1951 to the Solicitor General. Said last referred to affidavit attempts to nullify the first affidavit referred to.

On September 1, 1950 Mr. Baldwin Martin, an attorney of Macon who had been employed by Mr. Stembridge after the case was pending in the Court of Appeals, came to my store in Milledgeville, Georgia, which is known as the Western Auto Associates Store. Present at that time, in addition to Mr. Martin, were J. B. Jones, investigator, and Tony E. Owens, who was foreman of the jury in the Stembridge case. Mr. Martin discussed another case with Mr. Jones, and I understand that after this discussion he then interrogated Mr. Jones regarding the Stembridge case. I do know that after his conference with Mr. Jones that both of them came to me, and Mr. Martin handed me the signed statement of Mary Jane Harrison which is now attached to the extraordinary motion for a new trial. [fol. 4] I had never seen this statement before. I was told by Mr. Martin in the presence of Mr. Jones that this statement had been given to him (Mr. Martin) by Mr. Jones. I showed this statement to Mr. Owens at that time.

3. Mr. Jones had come to my store at my request. My client, Mr. Stembridge, had contended from the beginning of the case that all of the shooting which he did took place in the first room of the house where Emma Johnekin and Mary Jane Harrison were shot. The evidence of the case indicated there was a bullet hole in the wall of the third room in said house. Mr. Stembridge had insisted that this bullet, together with the section of the wall involved, be removed and sent to the Federal Bureau of Investigation for testing to ascertain first, whether the bullet came from his gun and second, whether there were any signs of human tissue on the bullet or on the sides of the hole in the wall through which it traveled.

Mr. Martin left us and went back to Macon, and then it was that I procured the services of a carpenter by the name of L. T. Clack, and Mr. Jones, Mr. Owens, the carpenter, and I went to the house where the shooting occurred, and we cut out a section of the wall which contained the hole and also removed the bullet, and we sent this material to the Federal Bureau of Investigation with a request that tests be made.

I saw the report from the Federal Bureau of Investigation, which was dated September 8, and discussed this

with Mr. Jones. Mr. Martin was likewise advised of the [fol. 5] contents of this report. Thereafter I was furnished with a copy of the affidavit given by J. E. Jones, investigator, to Mr. Martin on or about September 15, 1950. I know that Mr. Jones had the FBI report in his possession at the time that this affidavit was signed.

4. In paragraph 11 of the Jones' affidavit, dated January 24, the deponent says:

"I tried to tell the attorney for Mr. Stenbridge that I could produce the statement made to me by Mary Harrison at the time she was lying in the hospital not expected to live, but that attorney would not allow it to be introduced."

The stenographic transcript of the evidence introduced in this case has been made available for this hearing by the order of the court, and I respectfully refer to the cross examination of J. E. Jones as it appears on pages 73 and 74 of this record and particularly to the following question which I asked Mr. Jones:

"If that statement is made, Mr. Jones, I would like very much to have it (the signed Mary Jane Harrison statement which Jones said was in the GBI office in Atlanta) in court tomorrow where we can get this thing cleared up." This was the only conversation that I had with Jones relative to the Mary Jane Harrison statement, and that all I knew and that all that I or my associate attorneys, Mr. Ennis and Mr. Watts, knew about the statement was the information which we obtained from the testimony of J. E. Jones shown on the pages referred to herein.

5. I did not ask Chief of Police Ellis about the other signed copy which Jones testified had been turned over to said Chief of Police because I felt certain that it was [fol. 6] in the possession of the Solicitor General, and that I knew of no provision of the Georgia law which would have authorized me to demand this statement from this source, since the Georgia law, as I understand it, does not permit a defendant to require the State to produce evidence of this character.

6. I do know that Marion Stembridge has insisted from the beginning that he never left the front room in the house where the shooting took place that he was insistent upon having scientific tests made by the FBI as to the bullet in the third room, and in addition thereto, that he endeavored to get the Federal Bureau of Investigation to make supplemental tests, which they refused to do after they found out that the GBI had made ballistic tests of the bullets which had been found by the investigating officers.

I knew nothing of the Mary Jane Harrison signed statement until I heard J. E. Jones testify about it. I never saw the signed statement of Mary Jane Harrison, until the afternoon of September 1, 1950, in my store in Mill-edgeville, Georgia. I know that the FBI report, dated September 8, was in the hands of J. E. Jones, investigator, at the time he signed the affidavit dated September 15, which is now attached to the extraordinary motion for new trial.

7. This affidavit is given for the purpose of being used as evidence in the extraordinary motion for new trial which is now pending before the Honorable George S. Carpenter, Judge of the Superior Court.

(Signed) Frank O. Evans.

[fol. 7] Sworn to and subscribed before me, this 5 day of February, 1951, (signed) Lois H. Cosey, Notary Public.

AFFIDAVIT OF MARION W. STEMBRIDGE

Georgia, Baldwin County:

Personally appeared Marion W. Stembridge, who having been sworn, deposes and says:

1. I have read the affidavit signed by J. E. Jones, investigator for the Georgia Bureau of Investigation dated January 24, 1951, which has been served upon my attorneys by the Solicitor General of this Circuit.

2. On September 1, 1950, at my request, the bullet, plaster board, a section of 2' x 4' timber, and another piece of

wood about 4' x 12' were removed from the house where Emma Johnekin was shot. This material was submitted to the Federal Bureau of Investigation and I specifically wanted that agency to ascertain:

- (a) Whether the bullet came from my gun, and
- (b) Whether there were any blood stains or tissue on any of this material.

I have never in my life been in the room where this bullet was found in the wall because the only room of this house that I entered was the first room in the apartment on the north side, and all of the shooting which I did was in that room where I was trying to protect myself from two women who were insane with anger, and who were assaulting me.

[fol. 8] 3. That on September 1, during the late afternoon, I was advised by my attorney, Baldwin Martin of Macon, that he had obtained a signed copy of the statement given by Mary Jane Harrison as a dying declaration. My attorneys, who participated in the trial, had tried to get this same statement from Investigator J. E. Jones at the trial. Mr. Jones said that it was in Atlanta and he was requested to send for it and bring it to court, which he did not do. Before and after the trial, I have exerted every effort to obtain evidence which would show that I did not do any shooting except in the first room of the house in self-defense.

4. The first time I saw the signed statement of Mary Jane Harrison was in Mr. Martin's office in Macon, and at that time we discussed using it as the basis for an extraordinary motion. Before the affidavit of September 15 was signed by Mr. Martin, I saw him on two or three occasions and I knew before September 15 that the F. B. I. had sent to the Georgia Bureau of Investigation their report dated September 8, 1950 because this report had been in the hands of J. E. Jones and he had showed it to my attorneys.

5. I have tried to have other tests made by the F. B. I. but they declined to make these tests when they ascertained that the G. B. I. had made some ballistic tests. These ballistic tests were introduced in evidence at the trial.

6. I was arrested within forty-five minutes after the shooting took place. The Chief of Police and a City policeman by the name of Beckham came to my office. After the shooting I went back to my office and re-loaded my pistol with eight cartridges, seven of which were in the magazine [fol. 9] and one in the chamber. When these officers came in, I voluntarily turned this pistol over to them with all of the bullets.

This affidavit is given for the purpose of being used in the hearing of this extraordinary motion for new trial before the Honorable George S. Carpenter, Judge of the Superior Court.

(Signed) Marion W. Stembridge.

Sworn to and subscribed before me, this 5th day of February, 195—. (Signed) T. Baldwin Martin, Jr., Notary Public.

AFFIDAVIT OF BALDWIN MARTIN

Georgia, Bibb County:

Personally appeared T. Baldwin Martin, who after being duly sworn, deposes and says:

1. I was employed as attorney by Marion Stembridge in the above case after the Court of Appeals had handed down its decision.

2. That on September 1, 1950, pursuant to an engagement, I met Georgia Bureau of Investigation Agent J. E. Jones at Milledgeville, Georgia in connection with an investigation which he had made involving the case of Mattie Lou Tolbert v. Radio Cabs, Limited, which was a damage suit pending in the City Court of Macon. After talking to Mr. Jones about this case, and I was with him at the Western Auto Store which is operated by Mr. Frank Evans, attorney; I then asked Investigator Jones if he [fol. 10] knew where I could locate the signed statement given by Mary Jane Harrison to him shortly after she was shot. Mr. Jones then stated that he had a signed copy in his brief case and he gave me this paper at that

time. I showed this to Mr. Frank Evans, who also represents Mr. Stenbridge, and the foreman of the jury that tried Mr. Stenbridge happened to be in the store at the same time and Mr. Evans let him read it.

After this discussion about the Harrison woman's statement, Mr. Jones, Mr. Evans, the foreman of the jury, whose name I do not recall, and a carpenter left this store building for the purpose of going to the house where the shooting took place and advised me that they were going to remove the bullet from the wall in the third room and that this was being done at Mr. Stenbridge's request.

I brought the Harrison woman's statement back to Macon with me and for a period of about two weeks I made a study of the law relative to Extraordinary Motions for New Trial. I prepared an affidavit after talking to Mr. J. E. Jones and on or about September 15, he came to my office, which was then in the Bibb Building, and signed this statement. Mr. Carlton Mobley, an attorney with offices in Macon, was in my office at the time Mr. Jones signed this affidavit, the original of which is attached to the Extraordinary Motion for New Trial.

On the occasion of the signing of this affidavit, Mr. Jones discussed the fact that he had had a report from the F. B. I. as to the bullet which had been sent to them for investigation, and that this report showed that the bullet came from the same gun which had also been sent to the Bureau for [fol. 11] investigation. Mr. Jones likewise stated that the report did not show any human tissue on the bullet or on the wood or plaster board through which it had been shot. This was definitely discussed at the time.

This affidavit is given for the purpose of being used as evidence at the hearing on the Extraordinary Motion for New Trial in the above-stated case.

(Signed) T. Baldwin Martin.

Sworn to and subscribed before me this 3 day of February, 1951. (Signed) George S. Grant, Notary Public, Bibb Co., Ga.

9

AFFIDAVIT OF CARLTON MORLEY

Georgia, Bibb County:

Personally appeared Carlton Mobley, who having first been sworn says:

I am a resident of Bibb County, Georgia, a practicing attorney, with offices in the Persons Building in Macon, Georgia.

On or about September 15, 1950, I was in the office of T. Baldwin Martin, attorney, in the Bibb Building in Macon, Georgia, when J. E. Jones, Investigator for the Georgia Bureau of Investigation, signed an affidavit which was to be used in connection with an Extraordinary Motion for New Trial which was to be filed in the above case. I heard the conversation between Mr. Martin and Mr. Jones and saw him sign the original and one copy of the affidavit. Mr. Jones at the time discusses the fact that [fol. 12] he had a report from the F. B. I. as to the bullet which had been sent to them for testing purposes, and I recall his saying that this bullet was taken from the wall in the third room of the house where Emma Johnekin was shot. It was my understanding that this bullet be analyzed so as to determine whether it came from the gun and also to determine whether or not it, or the wall through which it was fired, contained any evidence of human tissue. Mr. Jones stated at the time he signed the affidavit that the reports from the F. B. I. showed that the bullet came from Stenbridge's gun. All of these facts were discussed before, or at the time, Jones signed the affidavit in question.

This 3 day of February, 1951.

(Signed) Carlton Mobley.

Sworn to and subscribed before me, this 3 day of February, 1951. (Signed) (Mrs. Louise W. Hardin, Notary Public, Bibb County, Ga.)

AFFIDAVITS OF MARION ENNIS and JAMES M. WATTS, JR.

Georgia, Baldwin County:

Personally appeared Marion Ennis and James M. Watts, Jr., who, each being duly sworn, deposes and says:

1. We are attorneys at law. We reside at Milledgeville, Georgia. We were associated with Frank O. Evans in the defense of Marion Stembridge when he was tried for the [fol. 13] murder of Emma Johnkin in Baldwin Superior Court.

We did not know and had never heard about the signed statement of Mary Jane Harrison, which is now attached to the extraordinary motion for new trial in this case, until it was brought out on the cross examination of J. E. Jones, investigator of the Georgia Bureau of Investigation, in said case. At that time Mr. Evans, who was conducting the cross examination, said to the witness:

"I would like very much to have it in court tomorrow where we can get the thing cleared up."

Mr. Jones never did offer to produce this statement to either of us, and we never saw the statement during the trial of the case.

We know of no provision of the Georgia law that would authorize the defendant to call on the State for the production of papers of this kind.

This affidavit is given for the purpose of being used in the extraordinary motion for new trial which is now pending before the Honorable George S. Carpenter, Judge of the Superior Court.

(Signed) Marion Ennis.

(Signed) James M. Watts, Jr.

Sworn to & subscribed before me, this 5 day of February, 1951. Eva B. Sloan (Signed), Notary Public.

[fol. 14]

AFFIDAVIT OF J. E. JONES

Georgia, Morgan County:

Personally appeared J. E. Jones who, having first been duly sworn, says:

1. I am an agent for the Georgia Bureau of Investigation, and am assigned to the Ocmulgee Circuit.

2. As such agent, I helped to investigate the case of the State vs. Marion W. Stembbridge, having been requested to do so by the law enforcement officers of Baldwin County.

3. Marion Stembbridge was indicted for the murder of Emma Johnekin. He was tried in Baldwin Superior Court and was convicted, and was given a sentence of from one to three years at the July term, 1949.

4. I was called as witness in behalf of the State, but was not permitted to remain in the courtroom except while on the witness stand. In view of this, I did not know until recently what Mary Jane Harrison had sworn to on the stand; therefore, when called upon to do so by Mr. Baldwin Martin, attorney for Mr. Stembbridge, I reviewed Mary Jane Harrison's statement, a statement which was given to me within two hours after Mary Jane had been shot, and compared it with her testimony on the stand at the time of the trial.

5. In her statement to me, Mary Jane stated that all shooting took place in the front room of the house, and on the stand she testified that Marion W. Stembbridge followed her, Emma Johnekin, into the third room of the house and shot her while she was sitting on a trunk.

6. As a result of this contradiction on the part of Mary [fol. 15] Jane Harrison, I made an affidavit to Mr. T. Baldwin Martin, attorney for Mr. Stembbridge, which stated that if the above statements on the part of Mary Jane Harrison were true, and at that time I did not have any additional evidence, then the jury would have rendered a decision favorable to Mr. Stembbridge, in my opinion.

7. Since that time, however, I have gone to the house of Mary Jane Harrison, in the presence of Mr. Frank Evans, attorney for Mr. Marion W. Stembbridge, and have removed a bullet from the wall in the third room of the Harrison residence.

8. This bullet was directly above the trunk in the third room, and could not have been put there except by a person standing in the third room or a person who was standing in the door between the second and third rooms. This bullet hole was pointed out to me by the State witnesses on the day following the shooting.

9. The bullet extracted from the wall in the third room of the Harrison residence was submitted to the Federal Bureau of Investigation along with the gun found in the possession of Mr. Stembridge at the time he was arrested, and a copy of their report is attached to this affidavit. The report states that the bullet extracted from the wall was fired by the gun submitted to them for comparison.

10. In view of the evidence discovered after my affidavit to Mr. Baldwin Martin, I believe it is sufficient to offset any contradictory statement which has been made to me by Mary Jane Harrison in connection with the location of Mr. Marion W. Stembridge at the time of the shooting.

11. During the trial of the case of the State vs. Marion [fol. 16] W. Stembridge, I tried to tell the attorney for Mr. Stembridge that I could produce the statement made to me by Mary Jane Harrison at the time she was lying in the hospital not expecting to live, but that attorney would not allow it to be introduced.

12. I reside in Madison, Georgia, which is in the Ocmulgee Circuit.

This affidavit is given in connection with the extraordinary motion for new trial which is to be filed in this case by Mr. Stembridge.

(Signed) J. E. Jones.

Sworn to and subscribed before me this 24th day of January, 1951. (Signed) Gertrude S. Banks, Notary Public, Fulton County, Georgia. My Commission Expires Feb. 3, 1953.

REPORT OF THE F. B. I. LABORATORY
FEDERAL BUREAU OF INVESTIGATION

Washington, D. C., September 8, 1950.

To: Mr. Delmar Jones, Captain in Charge, Georgia Bureau of Investigation, Atlanta, Georgia:

There follows a report of the FBI laboratory on the examination of evidence received from Mr. Jimmy Jones, Georgia Bureau of Investigation, Madison, Georgia. [fol. 17] This examination has been made with the understanding that the evidence is in connection with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

J. Edgar Hoover, Director.

Re: Unknown Subject, Emma Johnkin—Victim, Murder 3-7-49. Your File No. —. FBI File No. —. Lab. No. PC-28492 EK.

Examination requested by: Mr. Jimmy Jones, Georgia Bureau of Investigation, Madison, Georgia.

Reference: Letter of September 1, 1950.

Examination requested: Firearms—Chemical Analyses.

Specimens: Q1, Piece of Plaster board approximately 10" x 12" in size.

Q2, Piece of 2" x 4"—6" long.

Q3, Piece of wood approximately 3½" x 12½".

Q4, Bullet removed from wall.

K1, .380 Colt automatic pistol, serial No. 110946 with clip.

Also Submitted: One .380 REM-UMC cartridge.

Results of Examination:

No bloodstains or tissue were found on Q1, Q2, Q3, or Q4. The bullet specimen, Q4, has been identified as having been fired from K1.

[fol. 18] The serial number of this weapon was searched through the National Stolen Property Index; however, no previous record of a weapon bearing this serial number was found.

The evidence specimens are being returned to Mr. Jimmy Jones, Georgia Bureau of Investigation, Madison, Georgia, under separate cover by railway express collect.

CC: Mr. Jimmy Jones, Georgia Bureau of Investigation, Madison, Georgia.

Transcript of Evidence in Original Case

A transcript of the evidence in the original case of State of Georgia vs. Marion Stembridge which was tried at the July Term, 1949, of the Baldwin Superior Court is hereto attached, marked "Exhibit 'A'", and properly identified by the Honorable George S. Carpenter, judge of said court, and is hereby made a part of this bill of exceptions.

Plaintiff in error specifies as material to a clear understanding of the error complained of the following portions of the record, to wit:

1. The extraordinary motion for new trial together with all the affidavits thereto attached.
2. The order overruling said extraordinary motion for new trial.

All of the affidavits that were attached to the extraordinary motion for new trial in this case were introduced in evidence at the hearing on the extraordinary motion for new trial.

The Court of Appeals of Georgia has jurisdiction of this case in that the same involves the overruling of an extraordinary motion for new trial in a case where the defendant was sentenced from one to three years for a conviction of voluntary manslaughter which is not one of the particular cases to which the Supreme Court of Georgia has jurisdiction as provided by law under Section 2-3704 of the Georgia Code.

Plaintiff in error most respectfully submits this his bill of exceptions.

James M. Watts, Jr., Attorney for Marion W. Stembridge.

Post Office Box 401, Milledgeville, Georgia.

JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

I do certify that the foregoing bill of exceptions is true and contains all of the evidence and specifies all of the record material to a clear understanding of the errors complained of, and the Clerk of the Superior Court of Baldwin County is hereby directed to make out a complete copy of such portions of the record as are in the bill of exceptions specified, and certify them as such, and cause them to be transmitted to the next term of the Court of Appeals of Georgia, in order that the errors alleged to have been committed may be considered and corrected.

This 20th day of March, 1951.

George S. Carpenter, Judge of the Superior Courts,
Ocmulgee Circuit. N-208.

[fol. 22] "EXHIBIT 'A'" TO EXTRAORDINARY MOTION FOR
NEW TRIAL

BALDWIN SUPERIOR COURT, JULY TERM, 1949

THE STATE,

vs.

MARION W. STEMBRIDGE

Indictment for Murder

APPEARANCES:

For the State: C. S. Baldwin, Jr., Solicitor General.

For the Defendant: E. O. Evans, Marion Ennis, J. M. Watts, Jr.

[fol. 23] RICHARD LEE COOPER, sworn for the State.

Direct examination.

Your name is Richard Lee Cooper? Yes, sir.

Richard Lee, do you know Mr. Marion W. Stembridge?
Yes, sir.

I will ask you whether or not you ever bought an automobile from him? Yes, sir, I got one from him.

What kind of car was it? 1941 Chevrolet.

Second hand car? Yes, sir.

About when did you make that purchase? June.

June of last year? Yes, sir.

What did you bargain to pay him for it? \$800 and the insurance went to \$227, made \$1027.

Did he get you to sign a note for it? Yes, I signed a paper for the car.

Who bought the car? I got it, I was the head of it.

You bought it? Yes, sir.

Anybody else sign that note with you? Yes, my mother and my brother.

Is your mama married? Yes, sir.

Who is she married to? George W. Harrison.

What brother was it signed that note with you? Johnny Cooper.

How old was he at that time? I don't know how old he was.

[fol. 24] How were you to pay for that car? Pay by the week, \$17.50 a week.

How much of that \$17.50 were you going to furnish? I paid the whole \$17.50. My mother paid \$10 a month and my brother paid \$5.

You were to pay \$17.50 a week? Yes, sir.

And your brother \$5 a month? Yes, sir.

That was the understanding? Yes, sir.

That would be about \$85 a month? Yes, sir, that is what it was.

How long did you pay on it? I paid on it until September, I think.

Made three months' payment? Yes, sir.

Did you pay all you were supposed to pay for those first months? Yes, sir.

What made you stop paying on it? Well I come from work one day and a lumber truck ran into the back of it and tore it up and I went to him about the insurance and he told me didn't have any insurance on it.

Whom did you go to? Mr. Stembridge.

You reported you had a wreck? Yes, sir.

Was it your fault, that wreck? No, sir.

Mr. Ennis: I object to the question, was it your fault,

that wreck. I think he should just state the facts to the jury. As to whose fault the wreck was that should be determined from the facts themselves.

By the Court: Yes, I sustain the objection.

Who ran into you? Mr. Hal Hathaway.

Could you run that car after it was wrecked? Yes, sir, it would run but all the back of it was torn out.

[fol. 25] You told Mr. Stembridge about the wreck—did you take the car to him? Yes, I carried the car in front of the store.

What did he say about the insurance? He said he didn't have any kind of insurance on it, he didn't care if the lightning struck it and tore it up, that was my affair.

What did you tell him then? Not anything.

Did you leave the car there? No, sir. I carried it back to the house.

What became of the car? Came out then and pulled it in.

How long after the wreck before he pulled it in? Three or four weeks, I reckon.

Did you ever get it any more after that? No, sir.

What did he do with it? He sold it, I reckon.

Do you know who he sold it to? No, sir, I don't know the boy.

Did you hear any more from Mr. Stembridge about trying to collect money out of you? Yes, sir, after he had pulled the car in he called for me to come up there.

Did you go? No, sir.

No, on the 7th day of March when this shooting took place out there were you at home? No, sir, I was not there.

How long was it after the shooting before you got home? It was about eight o'clock that night before I got home.

[fol. 26] Cross-examination by Mr. Evans.

Mr. Baldwin: There are several counsel in this case. I think the rule is one shall do all the talking.

By the Court: That is the rule, yes.

Mr. Baldwin: I would like for them to pick out the head man right now.

Richard Lee, where was the last car that you bought before you bought the one from Mr. Stembridge? Macon.

When did you buy the car from Mr. Rossee in Eatonton? I haven't bought a car from Mr. Rossee in Eatonton.

When did this wreck occur that you said tore the car up? I don't know exactly the day the wreck was.

Was that the same wreck in which you ran into Mr. Louie Veal? No, sir.

Was that a different time from that? Yes, sir.

On the day that you ran into Mr. Louie Veal were you in the car in question, were you in the car that we have been talking about? No, sir, I was in a truck.

How much did you say you paid for this car, \$800 or \$850? Mr. Stembridge told me \$800.

Don't you know what you paid for it? I didn't pay for it, I was paying on it.

You don't know what the price was then? Yes, sir.

How much? \$800.

Will you say positively it was not \$850? No, sir, I don't know positively.

You are not sure? Yes, sir, that is what he told me when he carried me out there to look at it.

Told you what: \$800.

How much in notes did you sign? It was \$1027; insurance ran it up to \$1027.

[fol. 27] How long did those notes run? \$85 a month.

Each note was \$85 even money? I don't know whether even money or not.

After you got this car you say you paid on it two or three payments, didn't you, 2 or 3 months? Yes, sir.

Then you stopped paying on it, didn't you? Yes, sir.

And you had the wreck? Stopped paying on it after I had the wreck and he would not fix it.

Didn't you stop paying on it before you had the wreck? No, sir.

Wasn't it running even after you had the wreck? Yes, sir, it was running but it was torn up so.

You were driving it but it got ragged looking? Yes, sir, it was ragged.

You had had it at the time you had that wreck about five or six months? No, sir.

How long had you had it? About two months, or a little better, I reckon.

Yet you say you had made three payments? Yes, sir.

Why did you pay him after you had had the wreck? I thought he was going to fix it up.

You said you paid three payments? Yes, sir.

You bought the car in what month? June.

Your first payment came in July? No, sir, paid \$17.50 a week.

You talking about three monthly payments or three weekly payments? Three monthly ones.

You started off and you paid the month of July, didn't you? No, sir, I was paying by the week.

You paid it every week in July? Yes, sir, paid him something in June, too.

[fol. 28] When did you get the car? The 18th of June, I think.

So then you paid him the full month of July, is that right, weekly payments but you covered the whole month by each week in the month? Yes, sir.

Didn't miss one? No, sir.

The month of August you paid every time? Yes, sir.

The month of September, did you pay every time in the month of September? No, I didn't pay every time in the month of September; that is when I stopped payment.

When in September? Yes, I paid once in September.

It would have been in September if you paid three months from the time you purchased the car it was in September that you quit paying? Yes, sir.

So you had had the car three months—now when did you wreck the car? I don't know exactly when the wreck was.

Wasn't that wreck in August or was it in July? No, sir, it was sometime in August.

Was it the first part of August or the last part of August? I couldn't say.

How many weeks did you pay Mr. Stembridge after you had the wreck in August? I don't know; I don't know exactly when I had the wreck.

Did you pay him any? Yes, sir.

How many? I don't know how many; I don't know when I had the wreck.

It looks like to me if you wanted to tell the truth about this thing that you could tell us because you ought to re-

member how many you paid? I don't know exactly the time I had the wreck in August.

[fol. 29] But you said you were paying all that time, that 'if Mr. Stembridge don't fix my car I am not going to pay him', so how many times did you pay him after that—that was on your mind, you just testified about it? I paid him two or three weeks after I wrecked the car.

You paid him two or three times after you wrecked the car? Yes, sir.

Where you driving the car during that time? Yes, I drove it a little bit.

Did it get shopworn any more and torn up any more? No, sir.

You didn't have any more wrecks? No, sir.

Now you say your brother Johnny was to pay \$5 a month and your mother was to pay some? Yes, sir.

And all of you were going to use the car? Yes, sir.

Going to be a family car or just your individual car? No, sir, me and my mother and brother.

They were also using the car? No, sir, I drove it all the time myself.

They never did drive it any? No, sir, my mother can't drive.

What about your brother, Johnny? He don't have a license.

I asked whether he drove the car or not? Yes, he carried his wife to Mama's house and back.

Have you got a license? Yes, sir.

Is that the same license the chief of police looked at that day when he arrested you for running over Mr. Veal? Yes, that is the same one.

[fol. 30] What the Chief say that day? He didn't tell me anything.

Standing there, you and the Chief and Mr. Veal, what did he say about making a case against you? I didn't hear him say anything.

Did he arrest you? No, sir.

That was after all this shooting that occurred, wasn't it? Yes, sir.

Why didn't he arrest you?

Mr. Baldwin: I object to him going into a wreck after

the shooting occurred. It is put in there for prejudice and I object to it.

By the Court: I sustain the objection.

Richard Lee, had you ever done any business with Mr. Stenbridge before you bought this car? Yes, I had.

What had you done with him, had you borrowed money from him? Yes, I have borrowed money from him to fix up other cars I had.

How much did you owe him at the time you bought this car? I owed him about \$25, I reckon.

You are sure it was not over \$100? No, sir.

But you owed him something? About \$25.

Did he put that amount into the price you are talking about? No, sir.

You still owed him that separately? No, sir, I paid him along on that, too.

Now that pistol that Johnny had out there, whose pistol was it? Mr. George's.

Who is Mr. George? My mother's husband.

Your step-father? Yes, sir.

[fol. 31] In other words, Johnny the day of the shooting had George's pistol out there? I don't know, sir, I was not there.

Did Johnny have your pistol out there that day? I didn't have one.

What have you done with it? I have never had one.

Weren't you convicted for carrying a pistol in 1946 in this court house? That was my father's pistol I was bringing from Eatonton.

But you were convicted here, weren't you? Yes, sir.

You were found guilty? I don't know, sir, whether I was found guilty or not.

Didn't you get two months' sentence? No, sir.

Didn't pay any fine? Paid \$25.

What court was that in?

Mr. Baldwin: I object to this line of questions. It illustrates no issue in this case, simply put in for prejudice, the fact that he had a pistol in 1945 or 1946, whatever it was.

By the Court: Well, I overrule the objection.

JOHNNY COOPER, sworn for the State.

Direct examination.

Your name is Johnny Cooper? Yes, sir.

Johnny, on the 7th day of March, 1949, were you at home when Mr. Stembridge and Mr. Terry came up? Yes, sir, I was there.

Where were you sitting when they came up? I was sitting there on the right of the house, side of the apartment house, on the porch, on the banister by the chair.

On the banister on the porch? Yes, sir.

[fol. 32] Were you helping Richard pay for an automobile that he bought from Mr. Stembridge before that time? Yes, sir.

How much were you supposed to pay on that automobile? \$5 \$5 how often? Every month.

How old were you at the time that automobile was bought? I was 18 years.

Had you made any payments yourself? When I made a payment I gave it to Mama to make, I never made the payment.

How many five dollars did you pay down on it? Three. Why did you stop paying? After we wrecked the car, would not fix it up and we stopped payments.

When Mr. Stembridge and Mr. Terry came there that day did they come up on the porch? Yes, sir, they come up on the porch.

Who all were there at the house right then? My wife was there and Emma and my two little sisters.

Who was Emma? The one that was killed.

What was her last name? Emma Willie Johnekin.

How old was Emma when she got killed? She was 18.

What did Mr. Stembridge say when he came up? When he first came he didn't say nothing, he just walked on the porch and looked at me.

Did they say anything later on? He was standing there looking at me. I owed him \$20. So I told him, "Mr. Stembridge, the little money I owe you I will pay you on the 10th." I had just started with the State six days before.

You owed him \$20 besides the automobile? Yes, sir.

What did he say about that? He said he was not talking

about that money but about the car and what were we going to do about it. I told him I was not going to do [fol. 33] nothing. He asked where Richard was at. I told him, "He at the box factory. Ain't that right, Emma?" She said, yes. He said, "Where you working?" I said, "I work at the State now." He said, "Sam has got a blank and you going to sign it." I said, "I ain't going to sign a blank." So Mr. Sam got out the blank and when he walked over to Mr. Stembridge, Mr. Stembridge kind of standing back of me, I was sitting and never did get up, he walked to Mr. Stembridge and handed it to him and Mr. Stembridge took it and read it and handed it to me. When he handed it to me I read it. While I was reading it Mr. Stembridge walked up and caught me back of the collar. When I got up—Mr. Sam never stepped back when he handed it to Mr. Stembridge and he put his hand right back in his pocket.

I ask you to look at this paper (showing to witness) and state whether or not that is the order that Mr. Stembridge told Mr. Terry to write for you to sign? Yes, sir.

Look at that (showing pen)? That is the pen.

Whose pen is that? Mr. Sam's pen.

Did he give you that? Yes, sir.

Tell you to sign this? That is right.

Did you object to signing it? No, sir, I didn't sign it.

You objected to it? Yes, sir.

Did you tell him you were not going to sign? Yes, sir, I told him I was not going to sign it.

Did you tell him why? I told him I was not going to sign. He asked what was I going to do about the car. I asked would we get it back. He said, "No, you are not going to get it back."

[fol. 34] What did Mr. Stembridge do there when you refused to sign it? At that time he had me in the collar. When I got up Emma said, "Lord have mercy, he got brass knucks." When she said that he turned me loose and broke at her. She was already standing by the door and she ran in the house and he went in the house behind her, caught her in the first room, she was going in the second room.

You say that Emma said, "Lord have mercy, he got on brass knucks"? Yes, sir.

When she said that did Mr. Stembridge say anything? Yes, what the hell she had to do with it.

What did he do at that time? He turned me loose, broke in the house after her because she ran.

Did he run right straight behind her? Yes, sir.

Mr. Ennis: We object to leading questions of the Solicitor, suggesting an answer.

By the Court: I sustain the objection.

I will ask you whether or not he ran right straight behind her? He ran right straight behind here.

Whose side of the house did she run in on? On Mama's side.

How many rooms on that side of the house? Four.

How many rooms on the other side of the house? Four.

On the side of the house that Emma ran in on I will ask you whether or not the doors between each room, one door right in front of the other in a straight line? Yes, sir.

In the first room, what was in that room in the way of furniture? Just a bedroom suite.

In the second room, what was in that room in the way of furniture? Just two beds.

[fol. 35] The third room back, what was in that room? Bed and table there.

In the third room I will ask you whether or not there was a trunk or a box sitting against the side, right inside the third room? No, sir, there was a table.

In the fourth room, what was in there? That was the stove room and a table.

What room did Mr. Stembridge catch up with that girl in? Second room, caught her as she went back in the second room.

What did he do to her? He and her were tussling, he had her and she was running, he caught her in the back.

Did he have on his knucks? I didn't see his knucks.

You never noticed his knucks? No, sir.

When he ran in there who went in behind Mr. Stembridge, if anybody? After he went after Emma, Mama had just got to the top step. She didn't run in behind them, she walked in behind them. After she went in Mr. Sam he backed off me with his hand in his coat pocket and backed

until he got to the door and turned to go in and I went to go in my side.

What did you go in that side for? I went in there running out of the way.

How soon after your mama went in behind Mr. Stembridge did Mr. Terry go in behind her? Yes, sir.

How soon? Just time she got in he backed off from me and went in.

Did he go in there? Yes, sir, he went in.

Do you know what else happened? Before I could get to the door—bin't but three foot, before I could get to the door the shooting had started.

[fol. 36] How many shots were fired in there? You couldn't tell; looked like a bunch of firecrackers.

They were all almost together? Yes, sir.

How long did the shooting take place, all of it, from the first shot to the last? Four or five seconds.

Around 4 or 5 seconds? Yes, sir.

Who was the next somebody you saw after the shooting? After the shooting I went to the back, there was mama and Emma both coming out of the room, Mama holding her breast and Emma holding her stomach.

Did you see Mr. Terry and Stembridge when they left? No, sir, I didn't see them.

Was there a pistol in the house? Yes, sir, there was one in there.

Where was the pistol located? Right on my side.

Was that on the side where the shooting took place? No, sir.

Where was the pistol on your side? Under my bed.

Under the bed or mattress or what? Under the mattress.

Did any of you ever get that pistol? No, sir, never even bothered it until next morning when they came out there after it. I got it and gave it to them then.

Gave it to who? Mr. Ellis.

Is he a policeman? Yes, sir.

Did you fight Mr. Stembridge any? No, sir.

Put your hand on him? No, sir.

Did he put his on you? Yes, sir, but he didn't have his hands on me but about four or five seconds.

Where did he have hold of you? - Back of the collar. It

was hot and I had my shirt open. I had my shirt unbuttoned all the way down.

[fol. 37] Where was your wife when all this was going on? She was in the house.

What side was she on? On my side.

Did she ever come out there? Not while the shooting was going on.

Was she out there when Mr. Stembridge and them came out there? She came to the door while they were out there.

What children were around there at the house? There was not any children there no more than my two sisters and brother.

What are your sisters named? Louvenia and Martha and my brother's name Will.

Three children? Yes, sir.

Cross-examination by Mr. Evans.

Johnny, how old are you now? 19.

How long have you been married? I have been married a year and eight months.

One of the boys just got a divorce, is it you or Richard Lee? Richard.

You drive a car, don't you? No, sir.

Did you ever drive one? I drive sometimes—out in the woods I pull a load.

You would not drive on the big highway, you go out in the woods and drive in low gear? I can drive one as good as anybody else.

You had a right to drive that car some, didn't you? Yes, sir, I had a right to drive it some.

You didn't want to tear it up when you drove it? No, sir, I never take the habit of trying to tear up nothing like that.

[fol. 38] When you drive you are careful about it? Yes, I always be careful about it when I drive it.

You have got a driver's license? No, sir.

You were driving that car all right? No, sir, I was not driving it.

When was it that Richard Lee had his wreck? I can't think of what day it was; as near as I know it was on the 6th day of September.

How many payments had you made Mr. Stembridge then—you were supposed to pay him \$5 a month? Three.

When had you bought that car from Mr. Stembridge? In June.

Did you make any further payments after the wreck occurred? No, sir.

Were you in the car when it wrecked? Yes, sir.

Where were you in it? I was in the front.

Were you driving? No, sir.

Were you in the car when Richard Lee had his wreck with Mr. Veal? No, sir.

The car would still drive after that first wreck? Yes, it would still drive.

You all kept on driving it, didn't you? Drove it around trying to see about having it fixed. He drove it around a couple of weeks afterwards; the payments were paid on it.

The payments were all paid? That is right.

What happened to the car? When it got wrecked he told him if the lightning struck it and got burned he didn't have anything to do with it, that was his part. So he set it out in his yard. I think Mr. Stembridge came and got it. [fol. 39]. Did he set it in his yard or leave it in front of Mr. Stembridge's store? Left it there in front of his yard.

What if Richard Lee stated he left it at Mr. Stembridge's store, who is right? I know where they come and got it from.

So Richard Lee is wrong when he said he left it in front of Mr. Stembridge's store? I don't know whether he said that.

These gentlemen know whether he said it—just say whether he is wrong if he said that? He is wrong if he said that.

Because Mr. Stembridge came out there and got it from you all's house? That is right.

Who was it came and got it, Mr. Stembridge or Mr. Terry? Mr. Terry.

Mr. Terry came and got it and you say at this time you all didn't owe him anything, that you were not in arrears at all? What you talking about, when he had the wreck.

When he came and got it? We stopped paying on it when it was wrecked.

You didn't make any payments after the wreck? That is right.

What if Richard Lee says you did?

Mr. Baldwin: I object to his arguing with the witness, just ask him questions, he has no right to argue with him.

Mr. Evans: I contend I have a right to ask him if Richard Lee said a thing.

By the Court: I agree with you.

You made the statement that no payments were made on it after the car was wrecked? I remember making one more payment, that is right, I know he did, because he [fol. 40] made a payment after it was wrecked Saturday.

How much did he pay then? I don't know exactly what it was.

How do you know he paid it? I know he paid it.

You have changed your mind, you think some payments were made? I remember the payments now.

If payments were made after it was wrecked tell me why Mr. Terry came out there and got the car? It was not but one payment made, it was a weekly payment; wasn't but one payment made after the car was wrecked.

But you are positive Mr. Terry came out there and got the car? That is right.

You are positive you all didn't leave the car in front of Mr. Stembridge's place of business? That is right.

You are sure of that? Yes, everybody else knows that.

Now after Mr. Terry came and got the car what did he do with it? It say around, you know where Mr. Corry—

Down at Mr. Hodges, in Mr. Hodges' garage? It sat there for a while, I don't know how long. I think last November when the water was high I cleaned up and it was sitting there then.

Which one of you was it that got it from there you or Richard Lee? Didn't nobody get it from there.

Didn't you get that car back again? No, sir.

Didn't Mr. Terry have to come out there a second time and get it? When he come out there after it I guess he come out and got it, he didn't ask anybody anything.

Didn't Mr. Stembridge or Mr. Terry have to take that car away from you all twice? No, sir.

[fol. 41] Just once? That is right, he got it once and we never bothered it any more.

But you say the car down at Mr. Hodges' garage? That is right.

After it was taken away? Yes, sir.

You never say Richard Lee with the car after that? No, sir, he didn't have it any more because me and him use adjoining rooms together.

What kind of shape was that car in when Mr. Terry took it? It was in the condition when a car is wrecked, nothing wrong with it but all the back end knocked off under it back there. All the front end was the same as when they got it.

You all hadn't dented the car up? No, no more than that wreck.

The car was in good shape except for the back end? That and the piston slapping.

Piston slapping? Rod was slapping.

That comes from not having enough oil? Yes, sir, it had oil but the oil pump stopped up on it.

When they came walking up on the porch where were you sitting—Mr. Stenbridge and Mr. Terry? I was sitting on the banister of the porch.

Which way were you looking? When they came up I was talking to Emma, I was towards the house but when I looked and saw them I was looking back there.

Was that the way you were facing? I was facing the house.

Sitting on the rail on the front porch—along on what part of the porch, were you there about the middle of the porch? No, sir, a little better than the middle of it.

[fol. 42] Over towards the Sanitarium? No, sir.

Back this way? Yes, sir.

Tell us exactly what happened when Mr. Stenbridge and Mr. Terry came up? When they came up both came—

Look at me and take your time and tell it slowly? When they came up both came right on up there. Mr. Sam had his hand in his coat pocket and Mr. Stenbridge had his hand in his pants pocket. They came on up and stood up, neither one said nothing. I owed him \$20. So I told

about the money I owed him I would pay him on the 10th. I had just started working at the State.

Did he ask you anything about it? No, sir.

You mean they came and said nothing to anybody? No, sir, they didn't say anything.

Did you say anything to him? No, he come up and I owed him that money. I thought he come coming to see me about that.

Was it supposed to have been paid? Yes, it was supposed to have been paid.

Were you behind with it? Yes, sir.

You just sat there while they stood there with their hands in their pockets? I was sitting down.

You didn't stand up? No, sir.

Go ahead? Well after I told him that he said, "Where is Richard?" I told him at the box factory. I just had come from work at the state. She said, "Yes, he at the box factory." He said, "What you-all going to do about the car?" I told him I wasn't going to do nothing. He said, "Where you work?" I said, "I am working at the State." He said, "Write it out, Sam, he is going to sign it." Mr. Sam walked against the porch and wrote a blank [fol. 43] and handed it to Mr. Stembridge and Mr. Stembridge read it and handed it to me and I took it and read it. Mr. Stembridge was standing kind of side of me and he walked up and caught me back of the collar.

You said he asked you what you were going to do about the car? Yes, sir.

You told him you were not going to do nothing about the car? No, sir, I was not the leader of the car.

You told him you were not going to do nothing about the car? Yes, sir.

What did he tell you? He asked me where I was working then.

You told him at the State Hospital? That's right.

Then what did he say? He told Mr. Sam to write out a blank.

Mr. Sam did it? Yes, he wrote it. There is the blank to prove it.

Is this the blank here? Yes, sir.

What did he tell you he was writing out when he wrote this out? He didn't tell me what he was writing out.

Then he handed you the blank and handed you his fountain pen? That is right.

Did you intend to sign it? No, sir, I didn't intend to sign it.

Why weren't you going to sign it? Naturally I was not going to sign when he said I was not going to get the car back. No use for me paying he still had the car.

Didn't he tell you you would get the car back? No, sir, he said we would not get it back.

You mean he came out there and just said you had to give him that money? He didn't say I had to give it to [fol. 44] him but he was going to make me sign that blank—just as well as if I had to give it to him.

Did they do anything to threaten you? He put his hand back of my collar, you know naturally that would threaten anybody.

You were sitting on the rail? That is right.

If he had wanted to push you off the rail he would not have had any trouble? He couldn't have pushed me off the rail.

Why? I still had the use of my hands.

You said a while ago they came up there, one with his hand in his pocket and the other with his hand in his coat? That is right.

But you sat there on the rail? Yes, sir.

You were not scared? No, sir. I knew they were not coming up there for nothing.

All you were scared about, you owed him money and hadn't paid him, any maybe he was coming about that? I knew I had one before that that was overdue and I just paid them on up.

Mr. Terry, when he handed you the ticket and advanced upon you did Mr. Sam still have his hand in his pocket? Yes, he had put his hand back in his pocket and was standing right up on me.

Didn't Mr. Sam hand you this paper? No, sir.

What did he do, hand it to Mr. Stembridge? Yes, sir.

Mr. Stembridge handed it to you? Yes, sir.

Did Mr. Sam ever take his hands out of his pockets?

No, sir, when he backed back even to the door he didn't take his hands out of his pocket then.

[fol. 45] Mr. Stenbridge kept his hand in his hip pocket most of the time? He didn't have his hand in his hip pocket. I didn't see Mr. Stenbridge put his hand in his belt.

Do you remember having told me that Mr. Stenbridge had his left hand in his pocket and had some brass knucks there? I didn't tell you that.

You don't remember telling me that, just raised it up a little and put it back down, you don't remember that? No, sir.

Who was it told the police about the brass knucks? It was not me.

You were a while ago telling something about brass knucks? I said what Emma said, I said I didn't see them.

Emma said he had some brass knucks? Yes, Emma saw them.

You were the one standing right there facing him and you were the one that grabbed him around the neck? I didn't grab him.

You didn't see any brass knucks? No, sir, I didn't see them. I didn't raise my hand.

Did you see a pistol? No more than Mr. Sam's pistol.

Where did he have it? In his coat pocket.

In the right hand side pocket? Yes, sir.

In his coat pocket—did he have on a coat that day or did he just plain pants? He had on a coat.

You are sure that he had on a coat? I was looking; both of them had on coats, always do wear coats.

Mr. Stenbridge got on a coat now? I am talking about—

You say that Emma said—what did Emma say now? She said, "Lord have mercy, look at him, he has got Johnny in the collar and he has got on brass knucks."

[fol. 46] He didn't have knucks on the hand he had you in the collar with? No, he had me in the collar with his right hand.

With his left hand he had brass knucks? He had that in his pocket; I didn't see the knucks.

How did Emma see them? He had his hand in his pocket

and he had pulled it up. She could see it. By me sitting down on the banister I couldn't see it. I was not trying to see any knucks.

Weren't you standing right up there and Mr. Stembridge in front of you and he had you back of the neck? I said he walked behind me.

You were sitting on the rail? Yes, sir.

How did he come behind you? I was sitting there, he come walking on the side of me—wouldn't that be behind me?

There is a difference between being on the side and behind—you were still on the rail, according to your story? Yes, sir.

He had his hand in your collar? That is right.

Do you want to say he was behind you or on the side of you? He was behind me; he was not in front of me.

Was he standing outside the rail? No, sir, he was not standing behind the rail.

Well, he couldn't have been behind you? He was not standing right next to me. I was sitting here on the rail, kind of side like that where I would not fall, he was behind me like this, where he was standing.

When he caught you in the neck what did you do, just sat there? I didn't attempt to fight. If I had attempted to fight Mr. Sam was going to shoot.

[fol. 47] The reason you didn't fight Mr. Sam might shoot you? Nobody will fight when anybody got a pistol on them, you can't jump up and try to do something else.

You hadn't seen any pistols up until that time? Yes.

What we are talking about is why you didn't start to get away from Mr. Stembridge when he had you in the collar, why you kept sitting on the rail? He held me in the collar not over four or five second.

Didn't you look at his other hand in that four or five seconds? When I looked at Mr. Stembridge I looked at his face, I didn't look at his hand.

You said Mr. Stembridge had his hand in his pocket too? He did.

You didn't look at his other hand at all? He had it

in his pocket. If he had one hand in my shirt and that pulled this one up she could see the knucks; I didn't.

What did she say? She said, 'Lord a mercy, look at this man, got brass knucks and got Johnny in the collar.' She was standing right next to the door.

She saw them and you didn't—did your mother see them? Yes, sir.

What happened after she said that? He asked her what the hell she had to do with it and he broke at her, he was running when he said it, he was running at her.

Did he pull the brass knucks out then? I didn't see the knucks.

You watched him run after her? I couldn't so well be running and watch him. Mr. Sam was standing on me, I couldn't run.

I am trying to get you to tell me what you know about this, I want to know if you saw those knucks or not? I didn't see them.

[fol. 48] But you did see Mr. Stembridge after this woman, Emma? Yes, I saw him when he caught her.

How far did you see him run after her? Ran to the second room.

Did you see them go through the door? Yes, sir.

How far ahead of him was she? He caught her and had grabbed her when she went to go in the second door.

Did he have his knucks out then? I didn't see them.

Did he have his pistol out then? I didn't see that.

What did you do when that came on? After Mr. Stembridge went in the house after her, Mama came on the steps and she went in.

How long had they been in there before your mother came up on the steps? She was already coming up the steps when Emma said that.

Let's get it straight, when your mother came up—? She came up when they ran in the house; just as they ran in the house she was coming up the steps.

Just as Emma and Mr. Stembridge went into the house she was coming up the steps? That is right.

Are you sure of that? Yes, I saw it, I was looking at it.

You said a few minutes ago your mother saw brass knucks? She did.

When did she see them? I don't know exactly. She might have seen them in the house; she said she saw them.

I understood you to say she was on the porch? I didn't say she saw them on the porch.

When she came up what did she do? She went in the house behind them.

[fol. 49] Was she running? No, sir.

Just walked in calmly? That is right.

And she saw Mr. Stembbridge run in after Emma? That is right.

How long had they been gone in there before your mother went in? They just had gotten through the second door.

Were they running or walking? Mr. Stembbridge?

Yes? They were running; he ran after her.

Where were you all that time? I was still out there on the porch.

Were you looking in the door? Yes, sir.

At what was going on in there? When I was looking in the door all this didn't happen at one, it was not a long time happening.

But it was fast? That is right.

You were looking in the door? That is right.

You said it all? I didn't see it all.

What kept you for seeing it all? I didn't stay out there.

How much did you look at? Saw him when he caught Emma, that is the only thing.

Did you see him hit her? I don't know what he did when he grabbed her by the head, he might have hit her. I don't know whether he hit her or caught her by the head.

You were looking in the door? I couldn't tell whether he drew his hand back and hit her or either caught her.

How far was he away from you? I was sitting on the banister—you have been to the house.

I want you to tell the jury as far as from you to me? That is right.

[fol. 50] You mean you couldn't tell whether he hit her or whether he didn't? Well at a time like that you could

hardly have seen it either. I didn't see it, I couldn't tell whether he hit her or not.

You are the fellow that was there and say you saw it and you say she was hit with brass knucks? She was hit with something, I didn't say she was hit with brass knucks but she was hit with something.

Did you see her hit with anything? I saw the place.

You said you were on the porch there, just like this is the porch and this the door going in, you said you were looking straight in? I was.

You also know it was about 12 or 15 feet in there from where you were? That is right.

What I am asking is what you saw going on in there? All I saw is when he caught her but I don't know whether he hit her side of the head or grabbed her by the head.

You didn't see any brass knucks then? No, sir.

You didn't see any pistol then? Not then.

If he had had that pistol or brass knucks either one at that time wouldn't you have seen them, I mean if he had had them in his hand? Yes, if he had had the brass knucks on his hand but he didn't have his hands behind him, he had his hands in front of him; he was running from me.

He was holding his hands in front of him? He was going to catch her with his hand:

Don't you know you were standing in front of that door? Yes, you know the porch was right there and I was sitting on the banister.

What did you go in that other door for when you broke off? I just went in, I was getting out of the way.

[fol. 51] What did you tell me you went in there for? Well after I got back, all the shooting and after they stopped shooting—

I asked what you told me you went in there for, now answer my question? I said I went in after my rifle.

You said you went in there to get your rifle? Yes, sir.

That is what you told me? That is right.

Tell the truth about it? Yes, I did go in after my rifle.

As you went in the door you locked it? I didn't lock it. If I had locked it I know I couldn't have got back out there, if I had locked it. I would not have had the intention to come back there.

You didn't come out of the front door, you came out of

the back? Yes, I came out of the front and I went back through the house to the back.

How long did all that go on in there? Talking about the shooting?

Yes? About four or five seconds, it happened all at once:

Just like a bunch of fire crackers? That is right.

Didn't you go through your room and go straight out the back door—I believe a while ago you said the first ones you saw was your mother and the other woman, Emma, and that they were wounded and that is the first you saw of anybody? I said I come to the front and went back.

You are telling me you ducked in there to get your rifle? Yes, I did go in there.

You ducked in there to get your rifle, is that right? Yes, I went in there.

[fol. 52] You went to get your rifle? Yes.

Why did you say a while ago you didn't go to get it, you went because you were scared? Well, I was scared, quite natural when anybody shooting you know you get scared.

You went to get your rifle and came back on the porch? Yes.

That shooting had lasted about five or six seconds, what you said—when you got back on the porch did you see Mr. Sam and Mr. Stembridge? No, sir, I didn't see anybody.

You came out of the front door? Yes, sir.

You didn't see Mr. Stembridge and you didn't see Mr. Terry? No, sir.

What did you come back out there for? After they had done what they had done if I had seen them I would have shot.

After they had done what they had done if you had seen them you would have shot, is that right? Yes, sir.

But you didn't get back in time because they had gone, is that right? That is right.

How long were you in the house from the time you broke in the door until you came out? I was in there at least three minutes.

Where did you keep your rifle? Behind the chest.

What room was it in? Second room.

Just about 20 feet from where you went in? It might be about 30.

You knew where your rifle was? Yes, I put it down, I knew where it was.

Did you go straight to it and get it? No, sir, I didn't go straight to it because my wife asked me what was the matter. She was talking to me and I didn't go straight to it.

[fol. 53] What did you do for those two or three minutes? I went in the drawer to try to find some cartridges.

What kind of cartridges? 22.

What kind of rifle is that? Little 22 rifle.

It is a single shot? That is right.

You didn't have a single shot in it? No, sir.

Didn't have any shot in it, just sitting there without any bullets in it? No, sir, it didn't have any.

That is the reason it took you three minutes to get it because you had to find the bullets? That is right.

After you found them you came out of the door—are you sure you didn't go out that back door and slip in to the apartment on the other side? When?

I mean when the shooting was going on you didn't go right through your place and as soon as the shooting let up a little you went inside the other apartment through the back door? No, sir I didn't go in there in less than 25 minutes or 15 minutes, because I went to the store and come back and got there in the car with the police then before I come back in the house. When I went back in there then I went back for money.

The police came out there that night? I don't know.

The night after the shooting? I was not there.

Where were you? I was at the hospital.

The police talked to you, didn't they? They talked to me at the hospital.

They asked you about the pistol? That is right.

What did you tell them? They asked us did we have a pistol.

What did you tell them? They didn't ask me, they asked Mama; they didn't ask me nothing about a pistol.

[fol. 54] They were talking to all of you? I was right there in the room. They asked you if there was a pistol out there because they said Mr. Terry and Mr. Stenbridge claimed you all had a pistol? Didn't nobody get a pistol.

The investigating officers said Mr. Terry and Mr. Stenbridge said you all had a pistol out there and they asked you if you had a pistol out there and you didn't say anything? We told them we had a gun out there.

Was that on Sunday night? That was on Monday night.

Did you tell the law enforcement officers you had that pistol? No, sir, I didn't put my hand on the pistol.

Didn't the policemen get you all together and ask you did you have a pistol anywhere out there in that house? That morning they come out there and got it.

I am not talking about then but right after the shooting occurred—you quit evading and listen to what I say and answer the question—the police talked to you all that night after the shooting? That is right.

One of the questions they asked was whether or not you all had a pistol out there? They asked did we have a pistol at them.

And what did you tell them? I told them I didn't have one at them.

Put it in the paper you didn't have one? We didn't put in the paper.

Now Mr. Sam and Mr. Stenbridge said you all had a pistol, the policemen told you? They didn't tell us that day, didn't tell us even about having the commitment trial.

The police went out and searched the place? That is right but they didn't search on my side.

[fol. 55] They just searched the place where the shooting occurred? Yes, sir.

But you are next door and they didn't search it? No, sir, they couldn't get in that side.

It was the same house? That is right.

Now up there at the police did you tell the police you had George Harrison's gun in your side of the house? Yes, I told them.

When? I told them next morning about it.

You didn't tell them the first night? They didn't ask where the gun was that night.

But that night you had a chance to tell them when they were asking questions? They didn't ask where it was.

They just asked you if you had one out there? No, they

didn't ask that. They asked did we have one at them, that is what they said.

Say that again? Asked did we have a pistol at them.

Didn't they also ask you if there was a pistol in the house there? No, sir, they didn't ask that.

They did ask you if you had a rifle at the house? They saw the rifle when they came in.

The rifle was in your side and it was loaded up and you were not there? I was there when the policemen came there when they first came there.

Do you know what perjury is, false swearing, telling a lie when you are under oath? They didn't go on that side, they saw the rifle when they came out there.

Do you know it is a crime in this state to tell a lie when you are under oath, when you are sworn to the truth, do you know that? Yes, I know it.

[fol. 56] Did the policemen that night after the shooting ask you all whether or not there was a pistol out there at that house? No, sir, they didn't ask me that.

Did you tell them that you had a pistol? No, sir, I ain't got one.

You had one that night? No, sir, I didn't have one.

When did you get George's pistol? That Sunday night.

This shooting occurred on Monday night? Monday evening.

Where did George keep his pistol? He kept it under his bed.

Or under the mattress or under the pillow? Under the mattress.

In what room? The third room.

The third room back, under the mattress? That is right.

George Harrison is your step-father? That is right.

He is Mary Jane's husband? That is right.

That is your mother's husband, you live in the apartment next door to them—on Sunday night you went over there and got George Harrison's pistol and did you go and get it from his place that he kept it? They were not there.

Wasn't anybody there, you went and got it by yourself? I could go in and get anything I wanted to from them in there.

Answer my question, did you go in there and get it by yourself? Yes, I went and got it by myself.

There was not anybody there? No, sir.

Where did you find the pistol? Right under the bed where he kept it.

You say under the bed or under the mattress? Between the mattresses.

[fol. 57] Did he have two mattresses on the bed? Yes, sir.

Was it under the pillow? No, sir, it was between the mattresses.

What kind of pistol was that? 32 auto. tie.

Was it loaded? Yes, sir, it was loaded all the time.

George keeps that under his mattress—now if Mary Jane says he kept it under the pillow and it was under the pillow when you got it would she be telling the truth? I know I got it from under the mattress.

She would be mistaken if she said you got it from the pillow? That is where it most stays all the time, under the mattress; somebody could have put it up under the pillow.

Tell me where you got it from? I got it out from under the mattress.

You couldn't have got it from under the pillow? No, sir, I didn't get it from the pillow.

Was your mother there when you got it? No, sir, there was not anybody there.

Mr. Baldwin: Looks like my brother asks the same question 7 or 8 times. This boy told him five or six or seven times he got the pistol out from between the mattresses.

By the Court: Yes, I think he has answered that question.

What did you do with that pistol when you took it to your side of the house? I put it under the bed, between the mattresses.

In what room in your house? Second room.

It was loaded? That is right.

You said a while ago that you went back into that house to get a single shot 22 rifle to go out there and shoot Mr. [fol. 58] Sam and Mr. Stembridge when you said they had pistols each one? All happened before I got in the

house, they had started shooting before I even got in the house—Mr. Stenbridge already in the house.

Let's get down to the point; you said you went in there to get your 22 rifle to shoot them because they had shot up your folks, didn't you? Yes, sir.

And that you came back out the front door? Right back after them.

You were going back to shoot them? Didn't I have a right to protect the house?

That is not the question, you just answer my question—you went in there to get that 22 rifle to come out there to shoot them because they had shot up some of your folks? That is right.

You knew they both had pistols? I know there was more than one pistol shooting.

You knew that Emma and your mother couldn't have a pistol in there because you had it in your apartment, is that right? That is right.

So they had to have two pistols? Who had to have two?

Mr. Terry and Mr. Stenbridge, you heard all that shooting? Sure they had two pistols.

You hadn't seen them but when you heard the shooting? I thought Mr. Sam had his in his coat pocket. I saw the print of his in his coat pocket, because he had his hand on it. He had it in his coat pocket pointed towards me.

You knew they had two guns? Yes, sir.

You knew you were going to try to get them on off and if necessary you would go and shoot them? Quite naturally anybody come around your place?

[fol. 50] I am not saying it was wrong, I am saying what you were thinking—that is what you meant to do, go out there and shoot them and get them away from there? That is right.

So you went in there in your house and you had just the night before got a 32 automatic pistol and put it in the second room between the mattresses on your bed, fully loaded, you could have reached in there and got it and you could have walked out there and it would not have taken you three minutes? But I didn't know how to operate it.

So you went off and got a single shot 22 rifle? Yes, sir. That you didn't have cartridges for—which one were you going to shoot, Mr. Sam or Mr. Stembridge—didn't have but one shot? I could load one.

So you spent three minutes getting a 22 rifle in shape to go out and fight with them with those two fast shooting pistols they had? They didn't have any cartridges, they were empty with all that shooting.

Anyway, you passed by getting the 32 pistol and went in the next room and got the 22 rifle and came back and they had gone—now why didn't you get the 32 pistol? I didn't know how to operate it.

What did you get it for and take to your house to start with? I could go get it and bring it on my side, didn't have any reason to bring it there because nobody bothering me. I could have gone around there and got anything I wanted and carried it months and years because nobody used that pistol. That pistol hadn't been shot I reckon in nine or ten years.

[fol. 60] Why did you bring the pistol to your side of the house? I didn't have any reason to bring it there.

Didn't you get the pistol out of there after the shooting occurred? I got the pistol Sunday night. Before I could go to the store and get back the police had got there.

Just as soon as the shooting died down didn't you sneak in there and get that gun? I didn't have to go get the gun because if it had been there nobody would have moved it.

I want you to tell me the truth; when that shooting occurred didn't you run out of the back door of your apartment on your side? No, sir, I didn't go out the back until I went through the front and went and met Mama.

You mean to tell me you ran to the front door and ran to the back door and found your Mama and Emma coming out of the back door? That is right.

And they came straight out after the shooting and you didn't see Mr. Terry? I didn't see them, they might have come back, when I got back to the front they might have run out then.

Where is that pistol now? I gave it to Mr. Ellis.

Did you go to Mr. Ellis or did he come and find it? No, sir, he didn't come and find it because he couldn't get in

that side of the house unless he broke all the window glass out.

Did you go to Mr. Ellis or did he come out there and find it? Yes, we gave it to him and took the magazine out in the room where Emma got shot.

How long was that after the shooting? It was next morning about 9:30.

[fol. 61] That night you didn't give it to him? They didn't ask about it that night.

But next morning, they searched Emma's side the night before? I don't know, I was not there.

They talked to you all about it and you didn't say anything to the officers about having a pistol but next morning they came back and started searching again? No, sir, they didn't search next morning.

You mean you came up and told the officers, "I have got the gun"? They came and asked my Daddy did he have a 38 automatic? If I am not mistaken that is what he said.

You have been testifying all the time it was a 32 automatic? I didn't say what kind they said, I said the pistol was a 32.

You are saying that the pistol was actually a 32 automatic? That is right.

But the police asked him about a 38 automatic or any kind of gun? Yes.

What did he tell them? He told them he had one.

Where did he tell them it was? He didn't tell them. Mr. Eugene asked him to let him see it. He went to go to his bed to get it, I told him it was on my side.

George went to his bed to get it—where did he look? He didn't get a chance to look in the bed because I told him where it was. We were fixing to go to the hospital when they came, all loaded on the truck.

Who else came there to do searching? They didn't come there to, say, search, because they had already searched the house.

And asked George Harrison, "Do you have a pistol" and George said, "Yes, I have a pistol" and they said, [fol. 62] "Let us see it," is that right? That is right.

So George goes in to get his pistol and starts back to

the bed? He started to get his gun and I told him where it was.

What did you say? I told him it was around my side.

What did he say? He just said, "Go in there and get it."

That is the first he knew it was on your side? That is right, because the pistol he left around there, he never took it off but left it there under the bed.

Then the police asked George the night of the shooting, told George they searched the house and didn't find any gun why didn't he tell them he had the gun? They didn't ask him did he have the gun.

They didn't ask you if you had one? No, sir.

But they were asking if there was a gun out there? No, sir, they didn't ask was there a gun out there.

When was the last time you shot that gun? What gun?

That 32 of George's? I never shot it.

What did George say about you going there and getting his gun and not telling him? No, sir. I could go in the house and get anything I wanted and nobody would say nothing about it.

Had you got it before? No, sir.

Nobody had been prowling around your house? No, sir, nobody around there.

I can't understand why you got that 32 automatic pistol? If I had got it for somebody I would have shot somebody or something of the kind. You can ask anybody around there, I haven't had no words around there with nobody.

[fol. 63] What did you get it for? I just went in and got it.

Did you steal it? I don't steal anything out of there, I can get anything I want from out of there.

Isn't it true when Mr. Stembridge and Mr. Terry came up on the porch they walked up and started talking to you? No, sir.

They started talking to you? No, sir, they both stood there.

Isn't it true Mr. Stembridge tried to get you to tell him what you would do about this debt and you were just as

confusing as you could be like you are on the stand? No, sir.

You told him you were not going to do nothing and isn't it true he told you you were going to do something? No, sir, he said I was going to pay for it.

When he got you to where he understood you were going to pay the note, after you refused to sign a little slip saying "Pay to Marion W. Stembbridge amount of \$50 and charge to my account (showing to witness)", then he insisted a little more and didn't you kind of blow up? He didn't insist, he didn't hardly raise his voice.

Why did you get off that rail and grab him around the neck? I didn't grab him. I don't know who could have said I grabbed him around the neck. I didn't even put my hand on him.

Did you slip off the rail? I didn't ever get up, I didn't slip off.

Never had your hand around his neck? I didn't put my hand on him.

Even when he grabbed you in the neck you kept sitting on the rail? That is right.

[fol. 64] Don't you know you grabbed him around the neck and came off the rail? If I had what would I do, just stand and grab him and hold him? I didn't grab him.

You were going in that room after your mother and looked up and saw Mr. Sam? I didn't even move, I didn't make a break to go in.

Were you sitting on the rail right in front of that door? That is right.

Where you could see all the way through? Yes, sir.

You saw Emma go in? Yes, sir.

And saw Mr. Stembbridge go in? Yes, sir.

About that time your Mama came walking in and she didn't rush and she went in the house? That is right.

Did she run? She walked in there.

Did she walk up the steps? Yes, sir.

She came exactly when the thing broke out, is that right? That is right.

She was not there ahead of time? No, sir.

She came along just exactly as Mr. Stembbridge took out after Emma with that pair of knucks? I didn't say I saw him with any knucks.

Your mother walked up those steps—was she on the steps?—She was just at the bottom of the steps when he went to make a break, she got to the top of the steps and went in there.

She came walking slowly up the steps? She was walking peart.

And she walked in the door? She don't ever walk slow.

She walked fast in the door because Mr. Stenbridge had run in there and they were hollering brass knucks? No-body was hollering, wasn't a scream made.

[fol. 65] Didn't anybody say, "Look at the brass knucks"?

That is right but she didn't scream and say it.

Said in a low voice "That gentleman got brass knucks"? She just said like anybody might have been telling somebody. She was not standing no more than about a foot from me—the porch is not more than four feet wide.

Did you try to go in the house? No, sir.

Why didn't you try to go in the room where they were? I know if I had tried to go in Mr. Sam would shoot me.

Did he have a gun? Yes, sir.

Did you see it? I saw the print of it through his coat.

Did you ever see the gun? No, sir.

What did he say to you? Mr. Sam haven't opened his mouth, not the whole time he was out there.

He didn't say anything? No, sir, he didn't say a mumbly word.

What did he do, point the gun at you? He just stood up there with it in his coat, pointing at me.

Did he have his hand on it? He had to have his hand on it to point it at me.

Did he have his hand on it? Yes, sir.

How long did he stand there pointing that gun at you?

It was not no more than about two or three seconds.

Was he pointing the gun at you as your mother walked up the steps? That is right.

Which side of the porch was he on? He was on the opposite side, back this way.

Was he on the side next to the house or the side next to the rail? On the side next to the house.

[fol. 66] Where were you? I was still sitting on the rail.

You hadn't moved off the rail? No, sir.

Your mother came walking up after Mr. Sam put the gun on you? She was already at the steps.

Your mother had to walk right between you and Mr. Sam? She walked behind him he was standing close to me.

You were on the rail? She walked behind him.

She walked behind Mr. Sam? Yes, sir.

You said he was standing next to the house? I said when he came to hand Mr. Stenbridge the note he never did get back.

Come down here a minute (witness goes before jury and looks at diagram). Here is the front porch, there are the steps, there is the door to your side—where on this were you sitting? At this post here.

(After dinner recess) Johnny, come down here in front of the jury (witness goes before jury). Johnny, this is a diagram of the floor plan of the house out there, that is the porch, you said you were sitting right there in front of that door, you could look through the door? Yes, sir.

Where you were sitting on the rail you could look through this door into the place where they ran? That is right.

That is in George Harrison's apartment? That is right.

You were sitting on the rail when they ran in and you sat there, you said, because Mr. Terry was pointing something that looked like a pistol to you through his coat, is that right? Yes, sir.

Now you said Mr. Terry was right over here at the head of the steps? I said I was sitting right there and [fol. 67] Mr. Terry was standing right there by me.

He was standing right by your feet? Yes, sir.

Didn't you say a while ago he was on the porch next to the wall? I said he never did get back, when he handed—

Before dinner when I asked where Mr. Terry was standing I asked whether he was standing on the part next to the rail or next to the house? I thought you were talking about where was he standing up against back to the house.

Which was it? He was standing with his back towards the house? I was sitting on the rail.

How close was he to you? He was almost touching my foot.

You mean he was this close? Yes, sir.

Was he between you and the door? Yes, sir.

Now that porch there, how wide is that porch? The porch is about 30 feet wide, I mean across. It is not more than six feet wide.

You were sitting on the rail and Mr. Terry in front of you—was he straight in front of you, like this? He was not straight in front of me, he was standing kind of back, with his hand in his pocket.

While that was going on and he had you, as you thought, covered then your mother came up these steps? When all this happened she came up the steps.

He was not standing covering you when they ran in? Yes, sir.

He was still standing covering you when your mother came up the steps? Yes, sir.

How did your mother get by? He was standing along here—come all the way around and went in the door.

[fol. 68] How much room did she have to get back of Mr. Terry? She had three feet to walk back of him.

She walked that three feet in back of him to go in the door? Yes, sir.

Did he turn and look at her? No, sir.

Did he turn and look at her coming up the steps or was he looking at you? He didn't have to turn around, he could look here and at her at the same time, he didn't have to turn his head. He could see her coming up the steps by turning his eyes.

He let her walk on back. That is right.

What did he do then? He backed off of me.

He was standing right here and then when she walked in he backed back? Yes, sir.

Was he facing you? Yes, sir.

He backed back to there? Backed back to the door.

Your mother had gone in the house and the others were in and he was standing facing you? When he backed back to the door and turned to go in.

You didn't turn to follow him in? No, sir, I went in this door here.

All the time you had been trying to get in? No, sir, I didn't try to get in.

That is when you turned and went to this door of the other apartment? That is right.

He was inside here? Yes, sir.

And facing you when you went in or facing this way? He had turned his back then.

When he turned his back that is when you ran in the other door? That is right (witness resume stand.)

[fol. 69] Who lived in the apartment with George Harrison and your mother, Mary Jane? Nobody but the two that stayed there with them.

Nobody but the children? That is right.

Where did Emma live? She stayed there.

Did you count her as one of the children? That is right.

How old was Emma? 18.

She was one that stayed there? She had been there about three months.

Was anybody besides Emma and the children staying here? No, sir.

Your mother was working, wasn't she? She had got off then to go home; she was working.

Who looked after the children while she was gone? All of them big enough to look after themselves.

What did Emma do? She had a job.

She didn't have a regular job? She had a regular job then.

Did she help keep house? Yes, she kept house and washed and ironed there.

Did she sweep up? Yes, she kept everything clean down there.

Did she make up George Harrison's bed? Mama always make up the bed before she went to town.

Nobody made up George Harrison's bed except your mother? That is right.

Emma never did make up George's bed? No, sir, Mama always make up the bed by herself.

You mean to tell me she would not have known where the pistol was? Yes, everything at the house knew where it was.

[fol. 70] MARY JANE HARRISON, sworn for the State.

Direct examination.

Your name Mary Jane Harrison? Yes, sir.

Mary Jane, on the 7th of March, 1949, when Mr. Marion Stembridge and Mr. Terry come to your house and that shooting took place, were you there when they got there? No, sir, I was not.

Where were you? I went down to Mr. Hubbard Chandler's store.

What was happening when you came up—did you come on towards home and stop anywhere or not? I stopped at the next door.

What did you stop there for? Sarah was making me a dress to try it on and I stopped there and tried the dress on.

Did you hear any kind of racket at your home while you were in that house? No, sir.

When you left that house—how far is that house from your house? Just about I imagine as close as I can get to it, maybe about 30 feet.

When you came towards your house what did you see? When I came out of that house and looked on my porch Mr. Sam and Mr. Stembridge was standing on the porch. They were standing right opposite of Johnny, that is the way both were standing and I stood there on the porch and looked at them a few minutes. Well afterwards I just saw Mr. Stembridge, he walked right behind Johnny and when he got right behind Johnny he took good pains, he took his right hand and he put it down in Johnny's collar, holding to him. When he was holding to him he still had his left hand in his pocket. I called him, said, "Johnny," I [fol. 71] said, "What the matter with you all?" Either one didn't hear me. I come down, I didn't hurry a bit, I walked on over and got near about to the door step and went up the door step. I said, "Look, Buddy, why don't you get up from there?" He said, "Mama Mr. Stembridge has got a thing for me to sign." He said, "Ma, hell!"

Who said "Ma, Hell"? Mr. Stembridge said, "Ma, Hell" but neither looked back and when I come up on the porch Mr. Stembridge had those brass knuckles on his left hand

and he was holding Johnny with his right hand and Emma got up there, said, "Lord have mercy, look at the man standing up here with brass knuckles on his hand in little Johnny's collar." He made a rake to hit her and she dodged.

Did Mr. Stenbridge say anything? Before he hit at her he said, "What the hell God damn you got to do with it." Those are the words he said. She tore off in the house and he tore off in there behind her like he was tearing down a panel. I come up the steps.

Did you use any curse words or any bad language? No, sir.

Did Emma Johnkin call him anything? She sure didn't.

Did any of you make any threats what you were going to do to him? No, sir, nobody got mad but him, I don't guess.

Emma was just running? She was running.

Where did she run? Ran in the room. When I entered in the door I know where they were.

Where were they when you came in the door? They were right by the foot of the bed in the second bedroom.

Did he have hold to her? He had hold to her and she had hold to him, around his waist like and when I entered [fol. 72] in the door I saw where he had hit her with the knuckles, a place in the head about that long.

Burst the skin? He sure burst the skin.

That was in the second bedroom? Yes, sir.

What did you do when you went in? When I went on in there I didn't do anything because I couldn't do anything but when I went in, just about the time I got right in the middle door—

Middle door of what? Just about the time I got out of the living room, the front room and went in the second room door, got right in the second room, door, Mr. Sam Terry came right on behind me off the porch and he shot me in the back. A little before I got to Mr. Stenbridge and Emma I was shot again right there. I kept right straight by the, I didn't do nothing.

Were you hurt by the bullets, did they go in your body? Yes, sir, they went in.

Could you feel them the shock of it? Yes, sir, I did.

You went right on by them—did you ever get hold of them? No, sir.

Where did you go? I went on in there in the kitchen.

What did you go to the kitchen for? I just went in there and got to the kitchen table and went to lay on the table and then I dropped on my knees because I couldn't stand up, I was shot twice.

When you were shot twice you wanted to lie down? Yes, sir.

You made it to the table and fell over on that? Yes, sir.

[fol. 73] Come here and show me how you fell over on that kitchen table? You see like I was going to the table I said, "Humph, humph" and I went down like that (illustrating).

While you were on that table what happened to you? When Emma come out there after Mr. Stembridge had shot her, Emma come out of the room and she come and sat down on the trunk. Emma come out from in there. Mr. Stembridge had shot her in the arm and lodged right there, she come out of the room and she sat right down on that trunk in the dining room.

She came out of the second bedroom? Yes, sir.

And sat down in the third bedroom? That is right.

Which is part dining room? Yes, sir.

That was on the trunk after she was shot through the arm and hit on the head? That is right.

Now here is a picture of this house. Like that is the first bedroom and that is the second bedroom, where did Emma sit down, put your finger on it? This room (indicating).

That is the third room; I will ask you whether or not there was a trunk sitting right there? Trunk sitting right in the corner of it.

Did she sit on that? Yes, sir.

How many times did Mr. Stembridge shoot her, if he shot her any, after she sat down? I know he shot her twice, I only know that, and he shot three times.

Where were you when he was doing that shooting on Emma sitting on the trunk? Lying on the table.

What happened to you while you were lying on the table? Emma said, "Lord have mercy, Mary, he has hit me in

my stomach" and I raised up and went to turn around to look at her and just as I went to turn around Mr. Sam [fol. 74] had got middle way of the dining room and bedroom and when I went to turn around to look at her, I just twisted because I was paralyzed in the shoulder, he ran out there just a little piece and I was at the table and he just shot me right there and I said, "Come on, Emma" and she got up and me and her went on out the back door. When I went out of the back door I started to the other house and I saw a car parked.

Did you have a pistol at all after then? No, sir, I didn't have a gun.

Did Emma Johnkin have a pistol? No, sir.

Did you all go in there trying to get a pistol? No, sir.

Did you ever shoot a pistol? No, sir, never shot one in my life.

Now, Mary, come down here and show the jury something (witness goes before jury and testifies with reference to diagram held by Solicitor). Say this is the front room and this is the second bedroom? Yes, sir.

Where did all the shooting start at? The shooting started about that second door.

In what room? Second room.

How many times were you shot in that second room? I was shot twice right there, three times, because I was hit right there and right here, the first time right there, three times.

Were any bullet holes in that room? Yes, sir.

Where were the bullet holes? In the second room there—right there side of the trunk now.

[fol. 75] One in the wall right here? Yes, sir.

One in the wall right there? Yes, sir.

One in the door facing right there? Yes, sir.

Then got one mark over here behind the bed—is there any bullet hole in behind the bed? No, sir, not that I know of; it was a bullet in the bed.

It is on top of the cover? Yes, sir.

In this dining room and bedroom is there any bullet hole in that wall? Yes, sir.

Where is that bullet hole? Sitting right by the table.

Several over the trunk where the girl was sitting? Yes, sir.

How high is that bullet hole from the floor—did you see me measure it out there the other night with a yard stick? I sure did.

Do you remember how high it was? No, sir.

They have got another bullet hole marked here in the back part of the kitchen? That is where they found that bullet behind the stove.

There is no hole there? No, sir.

No telling where that bullet bounced around? No, sir.

Only three bullet holes that all could find? That is right.

Mr. Evans: The word "hole" should not be written on this chart.

Mr. Baldwin: That is where they found a loose bullet there and a loose bullet here.

Mr. Evans: Yes.

Can you show the jury any of those holes in you—show me where the first one was—can you pull your dress up?

[fol. 76] Mr. Ennis: I object to any wounds being shown the jury. It are on this particular witness. It is not the deceased and it would not be admissible in this case. If he had any evidence to show as to the nature of the wounds on the deceased, for which this defendant is on trial, that would be admissible but it would not be admissible to who [sic] it to this jury here.

By the Court: Well, Mr. Baldwin, I don't think you can make an exhibition of those wounds without subjecting the witness to a rather embarrassing position.

Mr. Baldwin: It won't have to disrobe her. I want to show some of them. All she has to do is to pull up her dress.

Mr. Ennis: I would like further for the record to show that my objection is, it is for the purpose of prejudicing this jury. It is highly prejudicial to the defendant and improper and irrelevant and not germane to the issues involved in this particular case.

By the Court: I will let it in for the present time, if he can show those wounds without undue embarrassment.

Where did the first bullet hit you—right in the middle of the back? Yes, sir.

Where did the next bullet hit you (witness shows on body); hit you right in the side there? Yes, sir.

Where did the next one (witness indicates); hit you right in that shoulder? Yes, sir.

Where is the next one (witness indicated on body); hit you right in the breast? Yes, sir.

Now, Mary did any of you, did you or Emma or any of you folks there at that time curse Mr. Stembridge or Mr. Terry? No, sir.

[fol. 77] Did you have any kind of weapon whatever? No, sir.

Did Emma Johnkin have any kind of weapon? No, sir.

Did you try to get any kind of weapon? No, sir.

Now did I understand you to say that the first one who went in the house was Emma Johnkin, running? Yes, sir.

The second one right behind her was Mr. Stembridge, running? Yes, sir.

Who was the third one? I went in then, I was the third one.

Who came in behind you? Mr. Sam Terry.

Were any of your little children right there? All the little ones were there.

All the little bitty ones? Yes, sir.

Did any of them go in those bedrooms while the shooting was going on? They were right there.

They came in behind whom? Mr. Terry.

How long would you say all that shooting took to happen? Just half a second; might not have been half a second.

All the shots were fired in a short length of time? Yes, sir.

Just right quick? Just as quick as anything ever is done.

After they finished shooting what did Mr. Terry and Mr. Stembridge do? Both of them ran out of the house; when I looked around both of them were just running.

What did you and Emma Johnkin do? I just told her to come on, said, "Come on, Emma." Me and her just go on out of the back and when I went out of the back door I saw his car parked behind the house.

[fol. 78] How many times was Emma Johnkin shot? I

saw three holes in her; I don't know how many times she was shot.

Do you know how many shots were fired in all? No, sir, I don't.

What county did that shooting take place in that killed Emma Johnkin? In Baldwin County.

Is that where the shooting took place that caused her death? Yes, sir.

Where did you and Emma go after the shooting, immediately afterwards? Just walked out to the back and I started around the house but Johnny met us and said, "Don't you all try to walk, you all go inside the house and lay down."

What side did you go in? Went in Johnny's side.

From the back? Yes.

Where did Johnny go? Went over to the next door and told those people to come over there and do something for us while he was going to the store and call the sheriff and the police and the doctor.

Did he go there and call anybody? Yes, sir.

Where did he go? Mr. Hardy's.

How did he go? Running.

How long before the police got out there? They came right immediately, time he called they were right there, looked like they were already coming.

How far is it to Mr. Hardy's store from your house, from the front of your house? I couldn't naturally hardly estimate that but it was not far, it might be about 300 year-s or something like that.

You don't know, do you? No, sir, I don't.

[fol. 79] What police came out there? I didn't even know the police.

Do you know them now? I know Mr. Ellis.

When the police came out what did they do? When they first got there they came on in the house and I was lying on the bed there and he asked me what had happened out here and the children started to telling him and I just couldn't tell him nothing. I tried to tell him but I couldn't tell him nothing.

You were in bad condition? Yes, sir.

What did they do, did they look around the house any? No, sir, just asked about it and the children told him.

Mr. Ennis: I object to what anybody said.

By the Court: I sustain the objection.

Who carried you to the hospital? Policemen.

Right then? Yes, sir.

Carry Emma? Yes, sir.

Who else went with you? My little girl. There were three policemen.

Did you all at that house own a pistol? Yes, sir.

Where did you keep the pistol? We always kept it around there in the living room, bedroom.

That is the third room back? Yes, sir.

Was it back there that day? No, sir, it was not.

Did you know where it was? No, sir, I didn't know it was around there.

You didn't know where it was? No, sir.

They generally keep it in the third bedroom? That is where they keep it at.

Were you making for the pistol when you went in the house? No, sir.

[fol. 80] Do you know how to shoot? No, sir, I can't shoot no pistol.

How long did Emma live after she was shot? She lived three days, I think, Tuesday and Wednesday and Thursday.

What killed Emma? That bullet.

Mr. Ennis: Let her state the facts to the jury and let them draw the conclusion.

By the Court: I don't think you have quite laid the foundation for a question like that, Mr. Baldwin.

Did they ever get any bullets out of you? No, sir.

You are still carrying them in you? Yes, sir.

Mr. Ennis: I object to that line of questioning on the same ground.

By the Court: What do you say to the objection, Mr. Baldwin?

Mr. Baldwin: I asked if they got any bullets out of her and if they are still in her. I don't think his objection is well taken—nobody would know that as good as she would.

Mr. Ennis: I am very familiar with the rule of law with reference to the admission of testimony for the present time and I want to arise now and address myself to the court and make the objection that I made a moment ago.

and ask that the court exclude from this jury all evidence on the part of this witness with reference to any wounds that may have been inflicted on her by Sam Terry. The witness testified that Sam Terry shot her. Sam Terry is not on trial. The defendant is not on trial for shooting this woman. They are not joint defendants. There is no evidence of any conspiracy. The state does not contend that [fol. 81] in any way whatsoever. He has completed his examination of this witness and I respectfully say that such testimony should be stricken from the record and the jury instructed to disabuse their minds of that evidence, for it is highly prejudicial and most harmful and hurtful to this defendant.

By the Court: Now, Mr. Baldwin, do you desire to be heard on that?

Mr. Baldwin: Yes, sir. We do contend that there is a conspiracy between these two men to do an unlawful act. The unlawful act was to force this boy to sign an assignment of his wages. They were both engaged in that act—force him against his will, had him in the collar. The evidence shows they had brass knucks and were going to make him sign it. Where two people engage in an unlawful enterprise and then that goes into another unlawful act they are still engaged in that unlawful enterprise, backing each other up as they go along. Each one is bound by what the other one does all the way through that enterprise. Etc.

Mr. Ennis: I think the highest and best evidence on this particular question is the indictment itself. The Solicitor General has drafted a joint indictment against Marion W. Stembridge and Sam L. Terry. It may have been at one time the state was basing it on conspiracy but the grand jury on this indictment finds a no bill against Mr. Terry, as far as this trial is concerned.

Mr. Baldwin: That doesn't make any difference what the grand jury finds because he can still be indicted by a second grand jury and that does not make any difference anyhow. Mr. Terry is a witness, sworn here. Their contention as they outlined to the jury is that nobody had a pistol but Mr. Stembridge. We have got a right to see if that is true and show the fact that he shot but I never dreamed of a proposition where you couldn't

present wounds in a case, all in one transaction, all part of the *res gestae* of the case. Certainly you can present the wounds to show, if nothing else, how many shots were fired.

By the Court: Well I will adhere to my former ruling, Mr. Ennis. I will leave it in for the present time.

Mr. Ennis: In other words, I still have a right to renew my objection at any time before we go to the jury.

By the Court: Yes.

—Cross-examination.

Mary Jane, what kind of pistol was that George, your husband, owned? He owned an automatic.

What calibre automatic? I don't know, sir.

You just know it was an automatic—how many shots did it shoot? I don't even know that.

Where did he keep it? He kept it in there in the bedroom.

In which bedroom? In that one next to the kitchen.

Where did he keep it in the bedroom? Kept it under the bed there.

Under the bed? Under the pillow there.

He didn't keep it under the bed? He never put his hands on it, moved first one place and another in making the bed, sometimes he left on the dresser.

Ordinarily he kept it under the pillow? Yes, sir.

[fol. 83] Your son, Johnny Cooper, did he get that gun? He got it that Sunday evening.

Was that the evening before this shooting occurred the next day? Yes, sir.

What were the circumstances under which he got that gun? He always go around there and get a gun or rifle or something and take it on his side. He always go and get something but George didn't know he had it around there and at that time I didn't even know it.

It was customary for him to come in and get the gun? Yes, he come and get either one he wanted to and take in his house.

How many times had he gotten that pistol before? I don't know.

But it was customary for him to come and get the pistol? Yes, if he wanted it.

Did he go hunting with the pistol? No, sir, I didn't know anybody hunted with a pistol.

Do target shooting with the pistol? No, sir, he didn't ever shoot it.

What did he get it for? I don't know what he got it for.

He had gotten it before and it was a custom of his to come in there and get it—would he say anything to anybody when he got it? He would tell me, he would not tell George.

You would tell George? No, sir.

You would not tell George? No, sir.

He would take it there and keep it in his apartment? Yes, sir.

[fol. 84] And George would not know about it? No, sir.

And you don't know why he would do that but he did it? He just wanted to have something on his side, I guess, for protection.

Didn't he have a rifle over there? He didn't have a rifle over there that day. That boy had the rifle.

Who didn't have a rifle—where was the rifle? It was Harvey's, another one of the boys. He hasn't got nothing. The boys were gone hunting with the rifle.

The boys were gone hunting with the rifle? They were going to kill, I don't know what, rats or something, left there soon Sunday morning and went in the country with it.

There was not any rifle there that day? The rifle was there Monday, it was not there Sunday.

Where was the rifle Monday? I don't know.

Was it in your side or Johnny's side? I don't know, I don't fool with guns.

Did you ever see Johnny with a rifle? No, sir—did I ever see him with it any time?

No, I am talking about that afternoon of the shooting? No, sir, I didn't see him with it that day.

Did he have a rifle when he came out the back door—you said you met there? I met him.

Do you know whether or not he went to the front door with the rifle? No, sir, I don't.

And you don't know why he had the pistol over there? He didn't have any reason I don't reckon, why he had the

pistol, he was not mad about anything and not expecting anything.

[fol. 85] Wasn't that pistol really under that pillow in your side of the house that day that the shooting occurred? If it had been in there I would say it was in there and it had a right to be in there. If it had been, he would have said it, because the pistol was not in there.

The pistol came out of there that night after the shooting? That was in the day, wasn't in the night.

At the time in the evening they came out there? Yes, they came out there.

Did anybody tell them about George Harrison's gun at that time? They didn't ask nothing about it.

You don't know when they came out there next, do you? No, sir.

Did you tell the police after this thing had happened that you all did have a pistol out there? Yes, I told them had one out there.

How soon did you tell them? When they asked me.

How long was that after you got shot? It might have been next day, I don't know but I know they asked me and when they asked me I told them.

Did you tell them Johnny had it? I didn't even know he had the pistol. I told you I didn't know they had the pistol around there.

You thought that day that the pistol was in your side of the house? Sure, I thought it was around there.

You thought it was back there in your side of the house? Just like it always was.

Did you make any effort to get to that pistol you thought was there? No, sir. I would not have got the pistol because I didn't know how to shoot it.

[fol. 86] Did you see Johnny go in there after the shooting had occurred and pick that pistol up off the floor? No, sir.

Didn't see Johnny go in? Johnny didn't go in the house.

You all went out? We went out.

How long was it after Mr. Stembbridge and Mr. Terry had done all this shooting and gone out of the front door before you went out of the back door? I left right on out of the house.

In other words, they left out of the front and you left

out of the back at the same time—where did you start to then? I don't know.

Did you go around the house towards town or started around the other way? I started on the otherside of those peoples' house.

On the side towards the Sanitarium? In the back of their door. I went out of our back door and started towards their back door.

Did you turn to the right as you started out your back door? Yes, sir.

As you got out of the house, as you were going out your back door, did you start to the right? I started to the left side.

You didn't start to Johnny's house? I didn't start over there.

Where did Johnny see you? Saw me when I come out of the door.

Was he outside already? Come out of his door then. [fol. 87] In other words, you met at the back, the shooting was just over, you came out of your door and Johnny was out the back door, and you met right there in the back, is that correct? Yes, sir.

It was not very long when the shooting was over before Johnny was out the back door, is that correct? Yes, sir.

Did you stay inside the house any length of time before you left out of the back door? No, sir.

Now let's go back to the start of this thing—you lived in Putnam County before you came to Milledgeville? Yes, sir.

You have been here a few years? Yes, sir.

You lived on the place of Mr. C. M. Long up there? Yes, sir, I lived up there about two months.

How did you happen to leave Mr. Long's place in Putnam County?

Mr. Baldwin: I don't see the relevancy of why she left a place in Putnam County.

By the Court: I will permit him to go ahead to see what the purpose of the examination is.

Why did you leave Mr. Long's place in Putnam County? I was just fixing to move down here.

What caused you to come down here? Didn't nothing cause me to come down here.

What cause- you to leave? I was just going to leave. I didn't move up there for stationary.

What caused you to make up your mind? I didn't move up there for no stationary, I just moved there for a while and the children were working here and we were going backwards and forwards.

[fol. 88] That is the only reason you left? I was already going to move.

Do you know Dr. N. G. Houston a veterinarian in Eaton-ton? No, sir.

You don't know him at all? I know Dr. Houston.

Do you know Dr. Houston? Yes, sir.

Did you ever have any dealings with him? No, sir.

Do you know Mr. Algy Denham? Yes, sir.

Did you ever have any dealings with him? No, sir.

Did you know Mr. William Maddox? I don't know who that was.

Do you know Mr. Cecil Embry? Yes, sir.

Do you know Mr. Wylie Roberts? Yes, sir.

Now I would like you to answer the question, why did you leave Mr. Long's place? I was not on Mr. Long's place, I was on Mr. Henry Hearn's place. Mr. Mac Long was renting a house. I moved up there in the house. He wanted me to move because the boy was milking for him, so he would not have to go backwards and forwards to the house. I moved up there in the house. Mr. Mac and the boy fell out. Mr. Mac didn't say anything to me, he came up to the house and asked the boy, "Why don't you haul me some wood?" He said, "Mr. Mac, you told me to wait until Monday." He said, "Yes, but I want my wood hauled" and he commenced cursing. He said, "Time you get up my God damn money and get it up this evening." I come to the door and said, "How you going to get up the money and you don't know how much you owe?" He asked him how much he owed and he told him. He said, "I want you to get it up, don't I have you locked up." I went to town myself and tried to get the money. That night they come up, a mob crowd. There was not anybody at the house but me and the small children, waited [fol. 89] until everything left the house. When they first come there and drove in the yard I was sitting at the fire-place. I opened the door. They said, "that is Mr. Mac

and them" and they shut the door. I said, "Open the door" and opened the door and Mr. Mac didn't come in the house, he stayed out, he and Mr. Jim Parham, stayed out. I pushed some chairs in the corner for those that came in to take a seat. While I was moving the chairs Dr. Houston asked me, he didn't know my name, he said, "Where is Roy?" I said, "I don't know." When I went to say that he slapped me. I hadn't even said a word to him. He slapped me, he said, "You going to tell me where Roy is at." I said, "I don't know where he is." He knocked me down on the baby rocking chair and told me "I am going to get him and bring him here and you had better be here when I come back." I waited for him. They knew where he was and went and got him. I didn't know where he was. They come and went in there and told Mr. Mac I saw the boy when he went around there. The boy said he went and got in some kind of scrape. He thought I was still in the house. When I saw them coming back I went out the back door and I told the children to stay. When they come in they come in shooting. The children jumped out of the window and me and them went all the way down to the swamp. The other colored people said they know they beat Roy. Mr. Mac Long beat him and Mr. Jim Parham and Mr. Algy. He couldn't get about in three weeks, they just beat him so. They wanted me after then, said they wanted to get me and if they got me they were going to do me the same way, make me pull off every rag I had and beat me up, but they couldn't find me. I was at my daddy's. I hadn't said a [fol. 90] word to them, hadn't opened my mouth. Mr. Henry Hearn told me if I wanted the house I could get it. I said, "I am going to move anyway and I don't want to be going backwards and forwards to Eatonton."

That is the reason you left Eatonton? That is the reason.

You left because you were already ready to go? Yes.

How long was it after that that you left Putnam County?

I left there I reckon in about three weeks.

You stayed in Mr. Mac Long's place three more weeks after that happened? I didn't stay there.

Where did you go? I stayed with my daddy.

Who is Roy Cooper? That is my boy too.

Where is he now? He is working.

Did you pick up a chair and attempt to hit Dr. Houston with it? No, sir, I didn't have a chair and he didn't have one.

But he hit you? Yes, he hit me. Little Algy Denham had the chair as well as I remember, it has been four years. There was another crowd out there in the car hollering, "Kill them."

What did you say to them? I ain't said nothing.

Mr. Baldwin: I don't see how that illustrates a thing in this case. I move to rule it out.

By the Court: I sustain the objection.

Now let's go back to where you were that afternoon when the trouble started. I believe you say you were at a neighbor's house when the shooting occurred, that you were next door at a neighbor's house, is that correct? Yes, sir.

[fol. 91] An- that you were having a dress fitted? Yes sir.

Who was fitting that dress? Sarah Youngblood.

You went out on the porch of that house, which you said was about 30 feet from your house, and what did you see on the porch at your house? Mr. Sam Terry and Mr. Stembridge.

Did you see Johnny? Yes, Johnny and all the children were out there.

Did you see Emma? Emma was sitting so I couldn't see her.

Tell me how they were on that porch when you first saw them—I expect it would be better for you to come down here (witness goes before the jury)? I don't know anything about the map.

Those are the steps and that is the porch and those the uprights on the porch and over here is where you were on the porch over here on this side. (Explaining drawing)? Yes, sir.

Now you were standing over here and you looked over on your porch and what did you see—where was Mr. Sam standing? Mr. Stembridge was standing on this side.

Close to Milledgeville State Sanitarium? Yes, sir.

Where was Johnny? Right in here, he was sitting on the banister.

Where was Mr. Terry? Mr. Terry was standing right close to Johnny.

About where? Johnny was sitting about along there. Johnny was sitting there and Mr. Terry here? Yes, sir. Where was Emma? Sitting kind of off in front of them. [fol. 92] She was sitting in a chair? That is the first time she had been on the porch because she was sick.

Where were the children? All of them just clustered around.

How long did you stand on the porch there and look over on that porch? I don't reckon I stood over there no more than about a second.

What did you see going on? I saw Mr. Stembridge walk right behind Johnny.

Mr. Stembridge was over here? Yes, sir.

Johnny was there? Yes, sir.

What do you mean about when you say you saw him walk behind him—wasn't Johnny sitting on the rail? Walked there (Indicating on map).

If he was sitting on the rail how could he walk behind him? He just stepped over there. He had his hand behind there.

You mean he was on the side of him? Yes, he was standing beside him, I don't mean on the ground.

He couldn't have been behind him because Johnny was on the rail. Sitting on the banisters.

He couldn't have got behind him? Got his arm and hand.

He got to the side of him and reached up there and put his arm in Johnny's collar? He didn't put his arm on him put his hand down in his collar and held him.

You were on the other porch? Yes, I was looking at them.

What did you do? I asked them what was the matter.

What did they say? They never said nothing; they never hear me.

[fol. 93] They were 30 feet away? Yes, sir.

What did the folks in the house say, the folks fitting the dress? No, sir, they didn't even hear it.

Mr. Terry was closer to you than Mr. Stembridge? Yes, sir.

Did he turn and look at you? I don't see him ever look at me.

He didn't look up? No, sir.

How loud did you holler? I didn't holler loud.

Then what did you do after you hollered and they didn't pay any attention to you? I just kept walking to the house.

You just walked off the porch and on around back to the steps? Yes, sir.

You didn't look back as you came back? I didn't look back as I came off the porch going down the steps.

Did you see Mr. Stenbridge with his hand in little Johnny's collar, did you see that pair of knucks? I saw them.

You saw them from the other porch? I didn't see them from the other porch, I saw them when I come up the steps.

Did he have his hand in his pocket? He had his hand half way out of his coat pocket.

You could see that from the other porch? No, I saw it when I was coming up the steps.

You came across and came up the steps and didn't run or hurry? No, sir, I didn't run.

When did you see the knucks? When I come up on the door steps.

When you first got on the bottom? When I got on the second door step I saw him, he had his hand up that far. That is the reason Emma saw him:

[fol. 94] He had held him there long enough for you to come off that porch, come down the steps on the other side of the walk 30 or 35 feet, come up your steps and get on the porch, he had been holding Johnny by the collar? He was just holding him there in the neck.

What was Mr. Terry doing? Mr. Terry was not doing nothing but standing there.

Was he pointing something at Johnny too? They said he had a paper, I don't even know anything about what he had done but he was not doing nothing then but standing there with his hand in his pocket.

Mr. Stenbridge was there with his right hand on his collar and his left hand in his pocket? His left hand half way out of his coat pocket with brass knucks on them.

You saw those brass knucks when you were two steps up your steps? Yes, I saw them.

Which side of Johnny was Mr. Stenbridge on? On the left side.

Was he on the side towards the State Sanitarium—in

other words, Johnny was between you and Mr. Stenbridge but you could see him with his hand in his pocket? Yes, I saw him with his hand in his pocket, I sure did.

Take this, this is the rail (illustrating on table), over yonder is the State Sanitarium, Johnny is sitting up there against this rail like this, Mr. Stenbridge is between him and the State Sanitarium? Kind of with his back towards the South.

Back to the south, facing Johnny this way, Johnny sitting on the rail—now how did he have him in the collar by the right arm if he was facing this way, did he have his arm all the way around his neck? I don't know that he had [fol. 95] him fastened that way but I know that is the way he had him.

Mr. Stenbridge was like that, you say he got around back of him and got him in the collar with his right arm? Yes (illustrating with Mr. Ennis).

Did he reach around like this and get him or did he have his hand like this? He didn't put his arm around him like that.

Did he do like this? He was not standing that close on Johnny at first but when he got ready to put his hand down in Johnny's collar, Johnny had on a shirt and he kind of stepped a little bit around him and he did get his right hand.

I thought when you first saw them he had his hand in his collar? No, sir. I said I looked at him when he put his hand down in there.

When you came out on the porch I thought you said you looked there and you saw him with his hand in his collar? No, sir, I didn't say that.

Now those brass knucks, you say you saw them when you got to the second step? Yes, I saw them.

What kind of knucks? That have got brass on them and then they were black too.

Did they have any brass on them? Just a little bit, right across in here.

And they were black? Yes.

Where are those knucks now? I don't know, sir.

Did the police ever find them? I don't know that.

Who else saw those knucks besides you? All the children saw them.

[fol. 96] Did Johnny see them? Johnny said he never saw them because he had them on the other side of Johnny. All the children saw them and I saw them.—

When you came up on the second step there what happened then—you saw the knucks, he was pumping them up and down with his left hand? Emma raised up and said, Lord have mercy, look at this, he got his hand in Johnny's collar and got on these brass knucks." Emma said it and said it to the last, said it on her dying bed, and he did have them on. I would not say I saw them if I didn't see them.

Sitting there in the door, right in the door? Yes, sir.

Said "Lord, look at the man with the brass knucks on, got little Johnny in the collar", something like that, what did you say? I didn't say nothing but told little Buddy to get up.

What did you tell him to do? Nothing but get up.

You mean you talked all the way up the steps? I was talking to him.

When did you first start talking? Just about as I got on the door steps, I called Buddy, I said, "Little Buddy, what is the matter"—never did even hear me.

When Emma said, "Look at that man with those brass knucks" then what happened? He just tore off at Emma, broke to hit her with those knucks and she dodged him.

With his left hand? Yes, sir.

She was sitting in the door? She had got up then, and when she said, "Lord have mercy", she raised up like that looking at him and he looked around at her, and she said, "The man got on brass knucks and his hand in little [fol. 97] Johnny's collar." He come out with his hand and fastened her with the knucks and she dodged him and tore off in the house and man tore off in the house right behind her.

Was little Johnny there when all that happened? Yes, sir.

How close was Emma to little Johnny? Just like, here, you see that door, she was sitting right in front of that door.

About four feet from them or five feet, something like that, and she was sitting in the door and Mr. Stembridge had little Johnny by the collar and had the knucks in his pocket and he turned Johnny loose when Emma said that—

how was he going to hit Emma if he didn't? She didn't say that.

Didn't she say "Look at the man with the brass knucks? Yes, sir.

When that happened didn't he turn Johnny loose? Yes, sir.

According to what you said he pulled his left hand out and hit at her? He hit at her out there on the porch.

Was little Johnny there? Yes, sir.

Did little Johnny see the brass knucks? He said he had never seen them.

You saw them when he sprang at her? Yes, sir.

What was the matter with little Johnny? They covered him so he was crazy, scared him to death and he didn't see nothing.

You think some folks get scared to death, they don't see nothing and some folks see more than is there? He did.

[fol. 98] What did Johnny do then? He didn't do anything.

Was he still sitting on the rail? He got up and was standing up there and Mr. Sam was standing there with his hand in his pocket all the time, holding him.

Was little Johnny sitting on the rail when you first got on the porch? He was sitting on the rail when Mr. Sam Terry and Mr. Stembridge came up.

When you came walking up the steps? He was still sitting there.

When did he get off the rail? When I called him, I called him twice and he heard me and he got up.

That was before Mr. Stembridge turned him loose? Yes, sir.

You called him and then he got up? Yes, sir.

And about that same time this other woman said "Look at those brass knucks"—are you sure little Johnny was standing up then? No, sir, he had not got up then and I told him to get up from there.

When she did say "Look at those brass knucks", where were you? I was right fixing to come up the door steps when she first spoke that.

She said that and then Mr. Stembridge turned Johnny loose, Mr. Stembridge made a swing with those brass knucks with his left arm at Emma and Emma ran in the door, is

that right—now as Mr. Stembbridge made that swing where were you? Coming up the door steps.

As Mr. Stembbridge made that swing was Johnny sitting on the rail or was he standing up? He had done got up, just about got up.

He was standing up when Mr. Stembbridge made the swing? Yes.

[fol. 99] Where was Mr. Terry then? Still there with his hand in his pocket.

Was he between little Johnny and the door? Yes, sir, my door.

He was between little Johnny and your door? Yes, sir.

How far was he from little Johnny then? Just about a step.

Did he have his hand in his pocket? He had his hand in his coat.

Where did you pass Mr. Terry at? Standing there by the side of the door, with his back against the wall, when I passed him.

Was Mr. Terry's back against the wall? Back against the wall.

Then you passed between Mr. Terry and little Johnny? I didn't go between either one of them. They were back from my side, they were not right in my door, they were more in his door then they were in mine.

There are the steps again (showing diagram), they were back on this side close to the Sanitarium—where was Mr. Terry—there is your door right there. That is the front door.

Here is the front door, those the steps and this is the porch, that is your apartment, there is your front door? He was standing right side of the wall.

He was over against the wall? Yes, sir.

He was not very close to the rail? No, sir.

He had walked away and was over close to the wall? Yes, sir.

Where was little Johnny? Standing back there.

[fol. 100] Standing back over here—how did you get inside the house without going between Mr. Terry and little Johnny? Because they were not standing in front of my door, when I got up the steps Mr. Terry was on the other side of the door, he and Johnny.

Mr. Terry was back against the wall? Yes, sir.

When they ran into the house, Emma just got up out of the door, did she get up before she got struck at or afterwards? She got up before then.

What did she get up for? Because he had his hand in little Johnny's collar and she just raised up looking at him.

When he swung at her, what did she do? She broke off and went running in the house.

Where were you when she went through the door? I was coming right on the step there, coming up from the door steps.

What did Mr. Stenbridge do then? Mr. Stenbridge had already broke in the house.

When he went in the house where were you? I went on in the house behind him.

Were you still on your door steps when he went in the house? Coming up the steps.

You didn't increase your pace but went right on in there? Yes, I went in there.

What did you see when you started in the door? I saw Mr. Stenbridge and Emma, he had fastened her right over here side of the head with the brass knucks, place in the head about that long and blood running all down.

Did you see the knucks then? I didn't see them then. [Vol. 101] Where were they? They were in the second bedroom.

What were they doing? She was holding him around the waist and I don't know what he was doing.

Did he had a pistol? Yes, sir.

Did he have it out then? No, sir.

He didn't have his pistol out? No, sir.

Did she have a pistol? No, sir.

Did he have his knucks out? I don't know what he had done with his knucks but he ran in the house with his knucks because he bit her side of the head with them.

But you didn't see them when you got to look inside? No, sir.

Which side of the head did she get hit on? On this side.

Left side of the head? Yes, sir.

Along about there? If I am not mistaken it was on the left side of here head—the doctor can tell you.

When you saw her first was she bleeding bad? Bleeding about as bad as anybody could.

What did you say when you saw that? I didn't open my mouth, got so excited I couldn't say nothing.

You were walking and saw them back there in the second room—was she sitting down or standing up? She was not sitting down.

Tell me how they looked when you saw them? They were just standing up there side of the bed—Mr. Stembridge, I don't know what all he was doing. He was doing all he could do, she was just holding him around the waist, holding one of his hands—I don't know, she said she was holding his hands.

[fol. 102] I am talking about what you saw? She holding his hands.

Did he have his other arm loose? Yes, sir, he had his other arm loose.

Then what happen? I reckon he come to shooting her.

He began to shoot, you were looking, you are testifying you were looking at this? I didn't see him shoot her but I know he shot her.

Weren't you watching them? I saw him when he shot her on the trunk, when she was sitting on the trunk.

Weren't you standing there watching them? No, sir.

They were right straight ahead of you? Yes, I know they were but Mr. Sam had shot me three times, I couldn't stand up there.

You mean you were going straight down through those openings they were in the second room and you were straight down there? And I was shot too.

Before you ever get to Mr. Stembridge and before he ever got his pistol out you were shot three times from behind? Yes, I was shot three times, every time behind.

Didn't the first one knock you down? No, sir.

Did any of them knock you down? Yes, I fell down.

Did you know you were shot when you were hit the first time? No, I didn't really know I was shot, I didn't know what had happened to me.

Did you know you were shot the second time? Yes, I knew it, then because I saw Mr. Sam behind me shooting.

You turned and looked and saw him shooting? Yes, sir, I did look back behind me and saw him.

That is when you quit looking at Mr. Stembridge? Mr. Sam, when I went in the door, Mr. Sam come right on in the [fol. 103] door right behind me and time I entered in the second door Mr. Sam had shot me but before I got to Mr. Stembridge he had shot me again. He had shot three times before Mr. Stembridge shot a time.

Then you went from there and laid down across the kitchen table? A. Yes.

Then Mr. Sam shot you again, is that right? Yes, shot me.

Are you sure it was that next shot he made, are you sure he did the other shooting? He shot me every time.

Did you turn and look at him as he shot you the last time? That is why he shot me, I went to turn around and tell Emma to come on.

Mr. Sam shot you the fourth time? Yes, he shot me.

You had been shot four times—back there on the table—did you hear Mr. Stembridge shoot in there? Yes, I heard a pistol fire in there but I didn't see him shoot.

You heard a pistol fire once? Yes, sir.

You didn't see that at all? No, sir.

When you started looking again tell me what you saw? I was trying to see about Emma, she kept hollering, I was trying looked like to realize myself and to get her and when I looked she was coming oh at the time, face all bloody and right arm all tore up, she was bleeding, and when I looked around then I wanted to say something to Emma but I couldn't speak right then. I saw her when she dropped on the trunk and fell over that way and Mr. Stembridge come right there and stood right inside that door and shot at her twice, stood there on the trunk, on the shoulder and next time he stuck the pistol right there to her stomach. I saw that with my own eyes, and he shot her [fol. 104] in the stomach. God knows I am telling the truth.

In other words, after she was all wounded and arms all bloody and head bleeding she staggered into the back room? She did it.

And sat down then Mr. Stembridge came in and you turned and looked at him and he took the pistol and shot her

twice, once in the shoulder and again shot about her stomach and shot again? Twice there.

What was Mr. Terry doing? I reckon he thought I was going to die on the table or it looked like I was going to raise up he ran in there and decided he would shoot me again. He looked around and saw me fixing to raise up, when I turned around he hit me, and both of them got right together and sold out of the house.

Both got together and went out the front door and you went out of the back door? Yes, I went out of the back door.

When did you tell the police officers about Mr. Terry having shot? I told them when they came in there that morning talking about it; that Mr. Stenbridge shot me. I told the Sheriff, they had been coming in talking to me, couldn't talk to anybody and he come in there Saturday morning, Mr. Lingold—

You told them Mr. Terry shot you? Yes, and he was talking about Mr. Stenbridge. I said, "Mr. Stenbridge ain't shot me, Mr. Sam Terry shot me."

Mr. Stenbridge shot Emma—that was several days after the shooting? Yes, sir.

Nobody at all out there stated— Yes, they did.

Tell us about that? What do you mean?

The things I was fixing to ask you? They had told the police that Mr. Sam Terry shot me.

[fol. 105] Who had told them? All the children told them, Johnny told them.

Did Johnny see it? No, sir.

Now did he tell them? I don't know. He knew that is what the children said and he knew Mr. Sam walked off the porch and time he walked off the pistol fired.

You are saying Johnny knew Mr. Terry shot you? Yes, sir.

What if Johnny said he didn't know anything of the kind? I don't know what he will say.

I want to know who told the officers that Mr. Terry shot you, right after it happened? I don't know, I know I told them.

It was a couple of days before you told them? That is when I told them.

They went right on that night and took all kinds of warrants for Mr. Stenbridge? I don't know.

You had a bunch of police officers and the sheriff and they went right on and took a bunch of warrants for Mr. Stenbridge but didn't take any for Mr. Terry at all? I don't know what they did.

Have you ever taken a warrant for Mr. Terry? No, sir.

What is that? At the time it was done George went up there and tried to do something; I couldn't get out.

Are you saying Mr. Terry shot you so that you can prejudice this jury so they won't believe what Mr. Terry says in Mr. Stenbridge defense—are you just accusing Mr. Terry because you want this jury not to believe Mr. Terry in this case? No, sir. I would not say Mr. Terry shot me if he didn't shoot me.

[fol. 106] What about those bullets that came out of you, what if they show they were shot under a ballistics report from Mr. Stenbridge's gun? Mr. Stenbridge didn't shoot me.

Would you say the ballistic report was wrong—why haven't you made some effort to have Mr. Terry arrested or something done about Mr. Terry? I didn't have any warrant taken out even for Mr. Stenbridge; they knew it, all knew it. They said Mr. Sam Terry is the one that shot me. All the officers know it, because I know George came up here and he was telling it.

Your family knows a good bit about the courthouse and how to try a case? I don't know, I have never been in one.

What about those boys of yours? They have never been in court, nothing like that, big court, never have been in nothing.

What about Richard Lee? Richard Lee never been in a scrape, I am talking about a gun.

He didn't get caught with a pistol without a license? We were moving and George left his pistol and he just had the pistol in the car, he was not toting the pistol.

They caught him and he got two months for it or a fine? I don't know what they gave him.

That boy is the same one that ran over Mr. Veal?

Mr. Baldwin: I object to this line of questioning, some offense her boys might have done, she is not responsible.

-By the Court: I sustain the objection.

Isn't it true that Mr. Stenbridge shot all those shots? Mr. Stenbridge couldn't shoot me coming to him. I was [fol. 107] going to Mr. Stenbridge and he couldn't shoot me in the back coming to him. He was obliged to shoot me in the face, in the front somewhere.

How many times did Mr. Terry shoot in all? I couldn't tell how many times he shot.

This is the front porch (referring to diagram); this bullet hole in the door facing that you looked at yesterday, who shot it? I don't know.

Who did you tell me shot that bullet in the door facing yesterday? I told you I didn't know who shot the bullet but they said that the bullet came straight and I said if the bullet came straight Mr. Sam must have shot it.

Did you tell me positively yesterday that Mr. Sam shot it? He could have shot it.

What did you tell me yesterday? You asked me who shot that bullet. I said Mr. Sam Terry shot it because he was shooting straight.

You didn't say Mr. Sam Terry did shoot it? I said he could have shot it because he was shooting straight.

Don't you know the truth of this thing is you were up on the porch all the time this happened, you were there when Mr. Stenbridge and Mr. Terry came up? No, I was not there. I have got witnesses, colored people know I was not there. Mr. Chandler know I was not there at the house.

You know you were up there with Emma and Johnny and John-y was sitting on the rail and Mr. Stenbridge was insisting he do something about that bill, that he came off that rail, you know that Emma cursed him for everything in the catalogue and broke in there to get that gun, don't you— isn't that the truth? I was not there at the house and I know Emma didn't go after the gun. I am [fol. 108] going to tell the truth about it.

Redirect examination.

How many children you got? I got three small ones.

How many you got in all? Nine.

You had these little ones there named Louvenia, Martha, and Will? Yes, sir.

They were around the house there during the shooting? Yes, sir.

How old is Louvenia? 11.

How old is Martha? 9.

How old is Will? 13.

GEORGE HARRISON, sworn for the State.

Direct examination.

Your name is George Harrison? Yes, sir.

George, you are the husband of Mary Jane? Yes, sir.

How long have you and Mary Jane been married? Married about four years, I guess.

Were you there when the shooting took place? No, sir.

When was the first you knew about it? Well, when I came home from work that night.

Who do you work for? Mr. Charlie Weathers.

Pulp wood man? Yes, sir.

Where were your wife and Emma Johnekin when you got home? She was at the hospital.

Did you go up there? Yes, they were already there.

Did you go up there? Yes, sir.

Did you stay around up there practically all night? All night, yes, sir.

When did you go back to the house? The next morning after day, early next morning.

[fol. 109] In looking around that house there—did anybody sleep in that side of the house that night, or do you know, where the shooting took place? No, sir, didn't anybody sleep there that night.

In looking around the house next morning did you and the children pick up hulls and cartridges? Yes, sir.

How many did you find? I disremember really how many of those hulls I found during the time—anyhow, I turned over what I found.

All you found you turned over to Mr. Ellis? Yes, sir.

Is he the Chief of Police? Yes, sir.

Did you get hold to any bullets? Yes, sir.

Do you know how many of them you got? I did know but I didn't keep up with all of that; what I got I turned them over.

You turned over everything like that you found to Mr. Ellis? Yes, sir.

Did you all look carefully in that house? Yes, sir.

Cross-examination.

George, you have done some business with Mr. Stembridge, yourself? Yes, sir.

Prior to the time this all occurred? Yes, sir.

You had never had any trouble with him? I haven't.

As a matter of fact you took these boys in there, didn't you, to help get that car? Not me, I had nothing to do with that.

Didn't have anything to do with it originally when they first got it—your wife and the boys wanted to get the car—didn't you speak a good word to Mr. Stembridge [fol. 110] about letting them have it? I may have spoken a good word but not this automobile, I don't think.

You and Mr. Stembridge haven't had trouble? No, sir.

Mr. Terry—you have not had trouble with him? No, sir.

They were your wife and step-children and would you say you did not speak a good word for them? I say I don't know that he asked me anything about them in getting the automobile.

What if Mr. Stembridge said you did, would you say he was wrong about that or that you just don't remember? Well, I will say this: I didn't do any helping to get the automobile.

I know you were not on the note but did you speak a good word to Mr. Stembridge for the rest of the family to get the car? I sure didn't because I was not asked any information about that automobile.

Did you suggest they go to him? No, sir.

Did Mr. Stembridge ever talk to you about it? Yes, he talked to me about it after trouble about the payments on it.

He never talked to you beforehand about it when they were wanting to get the car from him? Who talked with me, you mean?

Mr. Stembridge? I told Mr. Stembridge about the automobile, when they were wanting to get the automobile, I told Mr. Stembridge I would have to see further before I took that much debt on me and I advised them it was too much for them.

You advised him it was too much for them? No, I advised them it was too much for them.

[fol. 111] How did you advise Mr. Stembridge? I don't know that I advised him any way but just told him I would not be in it at all.

He has never claimed that you were in it at all? No, sir, I reckon not.

Would you say that he was wrong when he said that it was because of you that he made the loan, I mean because you had done business with him that he made the loan to the family? I don't know about that. I just know that he would not have made the loan to me, not that much on the automobile.

You didn't think it was a good loan? Well, it was not a good loan.

Do you think your dealings have been on a satisfactory basis with Mr. Stembridge, you think that was the reason he made the loan to these people of yours? I don't know whether it was or not because they had been paying him everything they owed just like I had.

What happened when they started to having trouble about the car—did Mr. Stembridge ask you to help him get the money? He just asked me where is the boys and what they are doing and told me to tell them to come to see him.

Every time you would see him he would say, "Where are the boys?" Yes, sir.

And "Tell them to come to see me"? Yes, and I would tell them just what he said.

Why wouldn't they go? I don't remember them going.

What is that? After they had a squabble on the auto-

mobile I don't remember any of them paying him any more on the automobile.

[fol. 112] What kind of squabble did he have? Something or another about the automobile got broke and he couldn't fix it.

How long was that after they bought it? I don't know how long, it was a good while, I didn't keep up with that automobile.

The car was still running? When?

When they started squabbling about paying for it? It had been standing in the yard a good long while, I don't know whether it was running or not.

In you all's yard? Yes, sir.

What happened to the car then? After standing there so long?

Yes? I was told Mr. Sam Terry came out there and got it.

Then did they get the car again after that? No, sir, haven't had it any more.

What was the shape of the car when it was standing up there in the yard? Well the automobile was run against a truck and I couldn't tell just what defect there was about that automobile, only it was bent on the side some.

Bunged in some in the back? Some on the back, yes.

Scratched up generally? Probably so.

No-, George, you had a pistol, didn't you, at the time this shooting occurred—I mean you owned one? I had one before then.

Where did you generally keep that pistol in the house? Well, that pistol stayed sometime in the drawer and sometime in between the mattress or under the pillow on the bed, from one place to another.

[fol. 113] Where was it at this particular time? Well at that time I couldn't tell you because I didn't see it at all. I just know the pistol ought to have been in the house but so far as handling the pistol, I didn't actually.

Where was it supposed to have been in the house? At either one of those places I told you.

Did everybody get your pistol out and tamper with it? Not everybody did.

When you put it somewhere couldn't you go back and find it in the same place? Well, not all the time because

sometime when everybody was gone it may be in the bureau drawer and my wife would take it and hide it in between the bed tick, because the children go in those drawers, they are not locked, and they are likely to get hurt.

You didn't have any special place to keep it? No, sir. I never did have a special place to keep it, not in the house.

Where did you leave it in the house and the last time you saw it there? The last time I saw it it was between the mattresses or under the pillow one.

What did you tell the police, where did you tell them it was the last time you saw it? I don't know that they asked me but I know that is what I told them.

Did the police talk to you on Monday night, the night of the shooting? No, sir.

Did they come out to your house to make a search? Came out there next morning.

Who came out next morning? Chief Ellis and I don't know the other man's name.

Did Chief Ellis ask you for that pistol? He did.

What did you tell him? I told him, yes.

[fol. 114] Did he ask you where it was? No, sir, he didn't ask me where it was.

Did he go look for it? No, sir.

Did he ask you to let him see it? No, sir, I told him. I would let him see it, I didn't mind him seeing it.

He didn't ask you to get it and let him see it? No, sir.

What if Johnny Cooper said that he did and that he stopped you before you got in the house to get the pistol to shot it to him. I don't know what Johnny said.

If he said that then he is telling something wrong? He may have told me to go and get it after I told him I didn't mind him seeing it. He told me just let him see it.

Did he tell you to go get it? Yes, sir, if I wanted to I could let him see it.

So then Johnny stopped you? I don't remember that; there was so much on hand I don't remember everything that was said or done.

When you started to get the pistol it was not there? No, sir, it was not there.

What did you say? I don't know but I know the boy got the pistol.

You said the Chief told you to get the pistol and you went

there to get it without anybody bothering you and when you got there it was not there? That is right.

What did you say to the Chief then? I couldn't tell you really that words were said one after the other but anyhow so far as the pistol goes the Chief saw the pistol.

The Chief told you when you told him the pistol was not there where it was supposed to be? He stayed with me [fol. 115] all the time.

What did you think when you didn't find it? I don't know what I thought because the boys went and got it.

When you sent and didn't find it did you tell the Chief, "There is no pistol here"? I don't remember what I told him.

This was the day after the shooting—did you ask Johnny didn't he have it? No, sir.

Didn't he say to them; "I have got the pistol"? Whether he said it or not they went and got the pistol.

He said, "I got the pistol"? Yes, as far as I know.

You ought to be able to remember something like that—everybody was saying you had a pistol in your house? Yes, I had one.

The real reason they came out there was to make a search for the pistol and you said, "Yes, I have got a pistol and will get it", looks like you would remember when you went there and didn't find it what your reaction was? I remember what my reaction was.

What was it? That it was not there.

Was Johnny there when you went there and looked and did not find it there? His brother was there if he was not there, I don't remember whether both of the boys were back there at the time or not.

You remember the Chief was there? Yes, sir.

And the next thing you knew Johnny comes walking in and says, "Here is the pistol"? Yes, he brought the pistol in there.

He didn't say "It is in my house and I will get it"—[fol. 116] did he leave there to get the pistol? That is all I know he didn't tell anything—he knew I was looking for it.

He brought it back and gave it to you? Yes, sir.

What did he say? I don't know that he said anything but just handed me the pistol.

What did you say? I don't know that he said anything but just handed me the pistol.

What you say? I just told the Chief, "This is it."

Where did Johnny go to get that pistol? I didn't ask him.

Where did you go to in your house to look for that pistol? Right under that bed.

You and The Chief went together? Yes, he was there.

Where did you all go first? We may have gone to the bed first.

You know where the pistol was supposed to have been, where did you go first? That is where I went.

You went to the bed? Yes, sir.

Where did you look first? I looked under the pillow, looked under the tick.

Then where did you look? In the dresser drawer.

Did that boy have a habit of getting your gun? Well he has had it around in his side. He may have it sometime when I don't know anything about it. As I told you, it is little attention I paid to the pistol; I don't keep up with it.

Had he ever gotten it before? Well, yes.

What kind of pistol was it? Savage automatic.

What calibre? 32.

Was it loaded? Yes.

[fol. 117] How many cartridges did it hold? It shoots nine times.

When you got it did you inspect it to see whether it had been shot any? Yes, we inspected it.

Had it been shot any? No, sir, that pistol hadn't been shot.

When was the last time it was shot? I don't know.

When was the last time you shot it? I don't know.

When was the last time you saw it? I don't know, because I live in town and I would not be foolish enough to be shooting a pistol.

Was it a year ago the last time you shot it? I have been down here over three years and it hasn't been shot in a long time before I left.

It hasn't been shot within the last three years? No, I know it has not been shot in the last three years.

Do you have cartridges for it? Yes, I had some.

Have them loose or in a box? All the cartridges I had I had in the pistol and it was not full, I don't think.

Did you have any extra cartridges around the house? No, sir.

Did the Chief search for any extra cartridges around the house? No, sir, I showed him what I had.

Did they ever search your house out there? What for, you mean?

I mean for the pistol? Yes, they looked around out there when I was out there. I told them to look anywhere they wished to see did they see it or any other.

Did they make a thorough search of your house? They didn't search my house.

Did they search the closet in back of the front room? No, sir, they didn't make any search in the house at all.

[fol. 118] There is a picture of it (showing diagram); you know the closet I am talking about, back of the front room door, about four feet deep with a curtain in front of it; here is your apartment, these are the steps going up on the porch and go in the first room and go through that door? Yes, sir.

And in back of that door is a closet? Yes, sir.

It is about two feet across the front and runs back about four feet deep? I don't know the measurements, I know there is a little room in there.

They have got a closet in there? Yes, sir.

Did they search that closet? No, sir, not that I know of.

You say you turned the hulls over to the chief and the bullets over to the chief—did you take any bullets out of the wall? I got one out of the facing of the door and there are some more in the wall that have not been got out.

Why didn't you all get them out? Because I didn't want to tear up the walls of the house to get them out.

Do you mean that some bullets have been left in those walls that have not been gotten out for the purpose of this trial? I haven't seen where they come out.

How many bullets were in the walls? I saw two holes in there, I didn't see any come out. Did you get one out of the door facing? Yes, I got that out.

Did you get one out of the wall in the second room? That is one I didn't go in the wall to get because that would

tear up the house and I would let the man that owned [fol. 119] it see about that.

Did you tell the police officers about the bullets you thought were out there? Yes, they saw the holes.

What did they say about it? I don't know, I don't remember everything they said.

Redirect examination.

Right over that trunk where Emma Johnkin was sitting there is a bullet hole going in there? Yes, sir.

Mr. Evans: I object to that as he has not testified that Emma was sitting there.

By the Court: Yes, I sustain the objection.

This first room is the bedroom? Yes, sir.

What is the second room? Bedroom.

What is the third room? The third room is a dining room and got a bed in it.

Right inside the third room I ask you whether or not a trunk was there at the time of the shooting? Yes, sir.

Right there I will ask you whether or not there is a bullet hole that goes in the wall? That is right.

How high is that bullet hole from the floor? About 30 inches from the floor up the wall.

Did you see me measure it with a yard stick about two days ago? Yes, sir.

That bullet is still in there somewhere? Yes, sir.

That wall has got great big sheets of sheet rock on both sides? Yes, sir.

Whom does the house belong to? Mr. Goldstein.

You say the reason you didn't go in there was because you didn't want to tear up all that expensive wall? Yes, sir.

[fol. 120] Mr. Evans has been out there and seen that hole? Yes, sir.

Did he get in there and get it? No, sir.

Did he ask to go in there and get it? He has been out there and seen that hole and Mr. Ellis and Lingold and all of us and none of us felt called upon to tear down the wall to look for it? No, sir.

If Mr. Evans makes arrangements with Mr. Goldstein

to pay the damages he is at perfect liberty to get it? Yes, sir.

Mr. Goldsteip is the owner of the horse? He is the owner of the house, yes, sir.

You say Mr. Stembridge had some talk with you about these boys paying him after that wreck? Yes, sir.

I will ask you whether he made any kind of threats if they didn't pay him? Yes, he did.

What did he say? He told me to tell the boys to come to see him and better do it pretty quick or there would be some trouble about it and be some serious trouble and said for them to come and make payments on the automobile, "what they owed me, don't there would be some serious trouble" and he did tell me that Johnny owed him some insurance some way or other and told me to tell him he was going to collect that money or beat him to death. He said, "Of course we have never attempted to do anything to anybody here in the office," but says "We will come out there and do that", says, "We will come out and beat him to death or collect that." That is what he told me.

What about he had never attempted to do anything to anybody in the office, was that true or not; did you ever [fol. 121] see him attempt to do anything to somebody in the office? He said "We have never attempted to do anything to anybody here in the office." I thought right then what I had seen.

What had you seen happen there in the office? Some transaction about paying some money. Mr. Stembridge didn't do anything.

Mr. Ennis: If Mr. Stembridge didn't do anything I object to any testimony along that line.

By the Court: I sustain the objection.

Was Mr. Stembridge there when it was done? Yes, sir.

By the Court: I don't think that would be relevant, what happened in some other transaction.

Recross examination.

You say Mr. Stembridge said he was going to whip on them if they didn't pay off? That is what he said.

How long was that before all this occurred? That was along about Christmas.

This didn't occur until March? That is when it occurred.

What did they say when you told them Mr. Stembridge said he was going to whip on them? I don't know really just what they said about it.

You remember mighty good what Mr. Stembridge said? Because he said more than they said, if they said anything; they didn't answer.

Did they say maybe he couldn't whip on them? No, sir.

Maybe they would be ready for him? No, they didn't say that.

Maybe they had had folks to whip on them before—did they say that? They didn't say anything like that.

[fol. 122] They were used to folks whipping on them? Didn't say that.

What did they say? I don't remember just what they said. I know they didn't make any threats at all.

Did they go down and pay him his money? No, sir.

Did they keep his ear? Kept it there a while.

Did they tear it up? Someone else tore it up—of course, it was in their possession.

That had three months in which to do something? I don't know how long.

They were not very worried about what Mr. Stembridge said he would do to them? I don't know how worried they were.

Did any of them go to Mr. Stembridge when they found out he was in that attitude and try to do anything about it? Not that I know of.

Did you keep right on doing business with Mr. Stembridge after he said that? My boy wanted to borrow some money from him at the time and I went there and paid him for my boy, carried my little boy in and paid him.

I don't care about details—did you do any more business with him after he said he would whip on them? No, sir, I paid him.

You didn't do any more business with him from December up until this thing happened in March? Before December.

You didn't do any business with him after that at all? No, sir.

You didn't go back in there? No, sir, not after I paid him and my boy wanted to borrow some more money from him. That was after he said that.

[fol. 123] After he had been so mean as to say he would whip on folks why did you go back in there? He was not talking about whipping me.

Did you tell the police officers about this whipping business when they investigated this thing or are you telling it today for the first time? No, sir, I am not telling it the time.

Whom did you tell it to before? I told it in this grand jury room.

Who before that had you told it to, when the thing first happened, did you tell Mr. Ellis that? I may have told him. I told someone about it. I know I didn't tell everybody but I have mentioned it since this thing happened.

After he said that about your family, that he was going to whip some of them? Yes, sir.

And after they had been whipped before like they were in Putnam County you still did business there, is that correct? Not wholly correct.

What is wrong with it? I didn't do any with him but my boy borrowed some money from him and as soon as I saw how it was I went and paid the money and he wanted to borrow some more from him.

Anyway you did business with him after you knew that? Yes, I paid him what my boy owed him.

Did you or did you not try to get those boys to pay Mr. Stembridge? Well I told them if they thought that could go Mr. Stembridge's way on the automobile to go ahead or let him know they were not going to do it or couldn't do it.

While you were telling them to go and make some arrangements with Mr. Stembridge, what were you telling [fol. 124] Mr. Stembridge? I told him I was telling the boys what he said.

You were trying to help him get his money? He may have told you that.

You didn't tell him that? No, sir, I didn't tell him I was trying to make them pay him. I told him I would tell him what they said. I told Mr. Stembridge finally those boys were grown, I couldn't make them go.

You also told him they were hot-headed and they had had trouble with other automobiles in a good many other places? No, sir, nothing like that.

EUGENE ELLIS, sworn for the State.

Direct examination.

You are Chief of Police of Milledgeville? Yes, sir.

Mr. Ellis, when did you find out about this shooting, how long after it happened? I would say it was 35 minutes or 40 minutes.

Did you help make the arrest of Mr. Stenbridge? Yes.

Where did he have his pistol at that time? In his belt.

Show the jury how he had it? It was in his belt here. Stuck down in there? Yes, sir.

What was the shape it was in as to being loaded or unloaded? It was loaded.

What kind of pistol is this? That is an automatic colt.

Do you know what calibre it is? 38.

It is loaded right now, ain't it (showing to witness?) Yes.

[fol. 125] Did it have a clip in it at that time that held cartridges that slipped up in the handle? Yes.

How many bullets does this pistol hold? The clip holds seven, I believe, and one in the barrel.

Is this the clip (showing object)? Yes.

Are these the bullets that were in that clip (showing same)? Yes.

Did it have a bullet in the barrel at that time? Yes.

This pistol, what is the shape of that pistol or was the shape of it at that time for being polished or rusty? This side here was rusty.

The other side was polished and clean? Blue steel.

Do you know George Harrison? Yes.

I will ask whether or not he turned over to you any cartridges hulls? Yes, he did.

Where are the? In a box—not that box there, one of these.

Find them (witness finds hulls); is that all of them? Yes.

How many are there? Six.

Pour them out and let's see them (witness complies); are they the same calibre as the ones in the loaded pistol? Yes.

Are those all the hulls that that man turned over to you? Yes.

Did you go out there to that house and look for more yourself? I did.

Could you find any more? No, sir.

Did you get any bullets from out there in that house? [fol. 126] There were three bullets that George Harrison turned over to me at the same time.

Have you got those? Yes.

Are they in here? Yes.

Are those bullets the same kind as fire in this pistol of Mr. Stembridge's? It is the same calibre.

Did you get any more bullets in connection with that shooting? Yes, two more.

Where are they? One is here; that was removed from Emma Johnkin's body, and this one here, that was given to me by Dr. Woods, taken from her arm.

Taken from Emma Johnkin's arm? Yes.

This was from her body, what part of the body? In the back.

Where did that bullet go in her? About here, I would say.

In the stomach? Yes.

Who got it out? The undertaker.

Was that after she was dead? Yes.

Did you go up there and see Emma Johnkin the night you went in the hospital? Yes.

Did you keep in touch with her every day until she died? Yes.

See her—what wound on her would you say caused her death?

Mr. Ennis: I don't think it would be proper for my brother to ask what wound it was; let the jury reach the conclusion as to which wound caused death. He has not qualified as an expert on that line.

By the Court: Let the witness first state what the wounds were, if he knows it.

[fol. 127] Describe the wounds on this girl, where they went in? There was one in the arm in that area there, one in the shoulder and one in the abdomen—a place across the shoulder.

How many bullet wounds on her? There were four marks.

Did you see them and know where this bullet came out of her pelvis and where it went in, see the holes where they went in? Yes, I saw the holes.

After your examination and the course of those bullets which one would you say was the fatal bullet, in your opinion?

Mr. Ennis: It is the opinion of this witness. Let's let the witness first qualify and tell the jury what medical experience he has had and what he knows as to what causes the death of people. He is not qualified to answer that question.

Mr. Baldwin: There is a code section that says any witness can give his opinion after stating the facts on which he bases his opinion.

By the Court: I think the witness after stating that can give his opinion as to what caused her death.

Mr. Ennis: (Citing code section on opinion of experts):

I respectfully say this witness has not qualified as an expert.

Mr. Baldwin: We are not qualifying him as an expert.

By the Court: I don't think you would have to qualify him as an expert.

You saw on her body that night where a bullet went in her stomach? Yes.

[fol. 128] Later on you say that bullet was taken out of her pelvic bone? Yes.

Was it necessary for that bullet to go through her entrails down there? I would say yes.

You say you watched her every day until she died? I mean off and on, yes.

Mr. Ennis: I want to make my objection again. I think this witness ought to state the course this bullet travelled, where it entered and came out. It is purely imagination as to what happened on the inside. Your honor well knows it could hit bones—

By the Court: I think the witness after stating where it went in and came out could then state as to the cause of death and not what happened on the inside.

You saw where it went in? Yes.

And know where they got it out? Yes.

I will ask you in your opinion from your examination and what you saw with your own eyes, what your opinion is as to which bullet killed her? In my opinion I believe that that one that went in the abdomen caused her death.

Here is a picture of this house (referring to diagram)—come down here in front of the jury and let's look at it a little bit—you went out and made a careful examination of the premises? Yes.

Show the jury if you found any bullet holes in the walls or woodwork of that house where they were? There was a trunk sitting here with a bullet hole in the wall just above the trunk. There was one in the wall there in that second room; I won't say how far that was.

Put your finger about where it was? It was in the door right next to the wall.

[fol. 129]. Is that red circle approximately about where the bullet was? Approximately, yes.

Was there any other one? Not that I remember.

Do you remember looking in the door facing, whether a bullet went in either door facing or not? No, sir, I don't remember that.

Cross-examination.

Chief, these bullets that you found, they were turned over to you, I believe you say that three of them were in one jar there and they came out of the house, they were delivered to you as evidence found in the house? That is right.

Do you know where those bullets were found in the house? No, sir, I don't.

Did they attempt to tell you? No, sir.

They were just delivered to you? Just delivered to me.

And then two of them were taken out of the negro Emma, one I believe you said came out of the body that the undertaker got out and one came out of her arm? Yes, sir.

So that is five bullets. No I believe you said that those bullets were all of the same calibre as Mr. Stembridge's gun? Same calibre.

Did you send those off for a ballistic report? No, sir, I didn't send them off but the G. B. I. Agent Jones took them to Dr. Jones in Atlanta.

He had a ballistic report made on them? He has that, I don't have it.

Did you make the investigation around the premises there for other bullets? Yes.

[fol. 130] Did you find any other bullets? I didn't find anything else.

In other words, you looked at the walls and you looked at the floor and ceiling and looked all around to see if there was any more evidence of bullets there? Yes.

So far as you know these five account for all the bullets? Yes, the six hulls that were delivered to me and those three lead bullets were the only ones I know anything about.

In other words, you got five bullets to match six hulls, is that correct? Yes.

Do you know whether or not there is still a bullet in this woman Mary Jane? No, sir, I don't know.

If there was that would be six bullets and six hulls? Yes.

Now that pistol when you found it was it in substantially the same condition as it is now, the same degree of rust? Yes, that is just the way it was.

You don't know of your own knowledge whether or not these bullets or these hulls were fired from that pistol? No, sir, I don't.

You don't know from your own knowledge what caused the death of Emma Johnkin? That is right.

Redirect examination.

From your examination of Emma Johnkin your opinion is, one of these bullets killed her? That would be my opinion.

She is dead, ain't she? Yes.

Mr. Baldwin: I offer in evidence the pistol, the clip, [fol. 131] seven loaded cartridges, six empty hulls that have been fired, the three bullets delivered to him by George Harrison and the two bullets taken out of the body of the dead woman.

Mr. Ennis: No objection to all of that except one objection to the one that Mr. Ellis said Dr. Woods gave him.

By the Court: Well, the others are in evidence without objection; I sustain the objection to that.

Mr. Baldwin: I also offer in evidence the piece of paper

here purporting to be an order written out by Mr. Terry at Mr. Stenbridge's request for this boy Johnny Cooper to sign; and the fountain pen of Mr. Terry.

Mr. Ennis: No objection.

By the Court: The articles and document are in evidence without objection.

J. E. JONES, sworn for the State.

Your name is Mr. J. E. Jones? That is correct.

Mr. Jones, are you with the Georgia Bureau of Investigation as an operator? Yes.

Who pays your wages? The Department of Public Safety.

That is a department of the State of Georgia? Yes.

What are your duties? To assist the sheriffs and municipal governing authorities and superior court judges in the investigation of any criminal case in which we are invited.

Were you called in on this case? Yes.

When did you first get on it? On the evening of the accident, March 7th.

The same night it happened? I happened to be in town, Yes.

[Vol. 132] Did you go around to the hospital that night? Yes, I did.

Did you talk to Emma Johnkin? Yes.

Did you look at her? Yes.

How many wounds were on her, Mr. Jones? I noticed three while I was in there; there could have been more.

Show to the jury on your body where they were? There was one in the right arm.

Where did that one range that went in the arm? I understand it went out through the elbow.

Mr. Ennis: I object to what this witness understands.

By the Court: Yes, I sustain the objection.

(Witness continues) There was a hole there. In my opinion the projectile did come out through that hole—might have been a stab or some other thing that caused that hole.

Where was the other hole? There was another one in the abdomen in this part of the body and then there was an-

other burned mark on the back on the left side.

Did you see her shoulder? I did see it but I couldn't swear which side of the body it was on.

Was there a bullet in that? Yes, there was a bullet hole in the shoulder.

What is this burned mark on her back—show on my back where it was? There was a burned mark on the left shoulder going down this way (illustrating on Solicitor), beginning about here and ending here. It seemed as it had been caused by a projectile from a pistol.

That was how many in all? That was four, three that entered the body and one behind.

Was this girl conscious that night? Yes, she was conscious.

[fol. 133] I will ask you whether or not she realized the condition she was in as to the seriousness of her wounds? Yes, she did.

How do you know she did? Because I told her when I went into the room that the chief of police through the doctors had asked me to advise her that she was in a very serious condition and probably would not live.

—Mr. Ennis: I object to what the witness told the deceased not in the presence of the defendant and not part of the res gestae. I think the Solicitor should lay the proper foundation for what he is about to prove here now.

By the Court: I don't think what the witness told the party in the investigation would be admissible. He can state if he can the facts that surrounded the making of this declaration but what he might have told her I don't think would be admissible.

She had these four wounds on her then? Yes.

Did she appear to be in pain? Yes.

Did she have any other wound besides pistol wounds on her body? There was a marked abrasion on the right side of her head.

What kind of a looking wound was that? It was just an abrasion, as if she might have struck something or something might have struck her.

Was the skin broken on it? Yes.

What, if anything, was she saying about how she felt and

her condition? She was complaining about the pain that she was in.

Did she say any words about her condition?

[fol. 134] Mr. Ennis: I object to my brother leading this witness.

Mr. Baldwin: I asked whether or not she said anything that showed she was conscious of her condition.

By the Court: Go ahead, Mr. Baldwin.

(By witness) Yes, she had her hand over this wound in her abdomen, and she was frowning in her face, showed she was in intense pain when I went into the room.

How long did she live after being shot up? I couldn't swear to that. I went back to the hospital on a trip two days later and she was dead at that time but I don't know exactly what time she died.

Did you ask her to tell you what had happened? Yes.

As to who shot her and how it happened? Yes, I asked her to tell me exactly what happened to the best of her memory and belief. I requested that she be extremely careful in the testimony that she would give me or the statement she would give me.

Did she do that? Yes.

What did she say as to her being shot?

Mr. Ennis: I object as to what the deceased may have said to this witness. My brother still has not complied with the rule. The rule is that the deceased must know that she is in a dying condition, that she is in the article of death. She must be conscious of that fact and all this witness has testified to so far is that he observed pain from her having her hand over her abdomen and the frowning in her face. I respectfully say that he has not as yet laid the groundwork to make this evidence admissible and I object to it as being irrelevant and hearsay testimony.

[fol. 135] By the Court: What do you say?

Mr. Baldwin: That is not near all he said. He said she was shot four times, was knocked in the head with something, was in intense pain, held her hand over her stomach, that she died within two days. There are plenty of decisions on that line. Furthermore, I think the fact that she was advised of her condition is thoroughly admissible.

By the Court: Is there anything here to show that she was conscious of her condition at that time?

Was she fully conscious? Yes, she was fully conscious.

Was she advised of her serious condition? I didn't hear the doctor advise her. However, I did myself advise her of what I had heard. In other words, if I may speak a few minutes, the chief of police contacted me at the cafe down town. I was eating supper. He told me two women had been shot and were in the hospital and he had already been to the hospital or Mr. Beckum had already been to the hospital, one or the other and that they were in a critical condition and they wanted me to go up and talk with them. I found Emma—

Mr. Ennis: I object to this statement of the witness.

By the Court: I sustain the objection as to that but on the other you may go ahead.

Mr. Ennis: May I call the court's attention to the 16th Ga. App. 172?

By the Court: You may go ahead, Mr. Baldwin. I will instruct the jury in my charge.

Did she make a statement to you as to the cause of her being shot? Yes, she did.

[fol. 136] And as to who shot her? Yes.

Mr. Ennis: We understand the record shows your honor overruled my objection?

By the Court: Yes, I overruled the objection.

Did you write down what she said? Yes.

Write it down in long hand? Yes.

What did she say? May I read it?

Yes. (witness reads) When Mr. Stembridge and Terry came there all of us were on the porch. He asked about Richard and Johnny told him Richard was not here. "Where is Richard?" "He is working." And then Johnny changed the subject, Johnny said, "I will pay you, Mr. Stembridge, for what I owe you. I went to work at the State." "Haven't you been working there all the time?" "No, sir." Then he asked Johnny will you sign a paper for Richard?" "No it doesn't seem right." And she spoke up, "Lord have mercy," said, "He has got on brass knucks" and turned to Mr. Stembridge and said, "Haven't you?"

Mr. Ennis: I object to anything that he is reading in that statement that Johnny is saying. He is giving a

dying declaration, supposed to be a statement of the deceased and there are statements purported to be made by Johnny that the deceased is saying not in presence of this defendant.

By the Court: The statement that Johnny made a request of the defendant—go ahead.

(Witness continues reading) "He has got on brass knucks—haven't you?" He turned to go in the house, "God damn it, what is it to you? And he grabbed me and hit me with his knucks. He hit me on the head. Mary ran where I was and pulled him loose from me. He shot [fol. 137] me in the hand and he shot at Mary. I went on inside the house and sat on the trunk. He came to the door and shot me in the shoulder and in the stomach. I didn't have a gun, neither a knife and Mary had neither gun nor knife. I swear this information is true. When he hit me I grabbed him and Mary pulled us apart. He had a gun and started firing. Signed, Emma Johnekin. This was signed in my presence and signed in the presence of deputy sheriff Buford Lingold and Louvenia Harrison and Johnny Cooper, the latter two being relatives of the deceased.

Did you see Mary Jane Harrison that night? Yes.

What shape was she in? Mary Jane was in what seemed to be the same condition; she was in the X-ray room at the time I went in to see her. She had been shot also.

Did you get to talk to her any? Yes, I did talk with her.

That night? Yes.

Cross-examination.

Mr. Jones, have you ever had any medical training? I don't see what you mean by medical training. I had two years of pre-med in Mercer University. I have not had medical training.

When you were testifying a few minutes ago about the physical condition of these people when you made the investigation were you looking at it from a medical standpoint, as to the wounds and the extent of the damage, or were you expecting to have a doctor in here to aid the legal testimony? While I was in the room a doctor did

come in. He had a probe with a piece of cotton on the [fol. 138] end of it that was about 12 or 14 inches long.

Mr. Evans: I will ask you if you will answer my question.

I asked him if he was expecting to have medical testimony at this hearing or if he thought he was to give medical testimony.

By the Court: The witness can answer and if he desires to explain he can do so.

(By witness) I hadn't thought about it either way as to whether or not there would be medical testimony given.

You stated that when you saw Emma Johnkin that the bullet had come in here and had come out of her elbow? I stated that there was a hole in her elbow. Whether or not the projectile had gone through there I didn't state—could have been a knife wound or anything else. If you will check the court record you will find it.

You also stated that she had an abrasive wound on the right side of her head? Yes.

Are you positive that it was not on the left? I am positive that the one I saw was on the right.

There might have been one on the left? I didn't see it.

Who was her doctor? I couldn't swear who the doctor was. I was new in this town at that time, he was introduced to me, I don't remember his name.

When you were going to take this so-called dying declaration did you consult with her doctor? The doctor was in the room and I asked him in her presence her condition and that was when he put the probe into her stomach. He never did answer one way or the other.

[fol. 139] In other words, the doctor was there and he didn't answer whether she was in a dying condition or whether she was not? He didn't answer my question.

The doctor was present when you took the statement, is that correct? He came in while I was taking the statement.

The doctor came in? As I have told you before I was new in the town at the time and I don't remember his name. I am sure that some of the other policemen who were in the room know it.

Didn't you anticipate that on the trial of this case, Mr. Jones, they would ask you who was present at the time

the dying declaration was taken? I told you who was present.

No, sir, you have not—I asked you what the doctor's name was? I told you I couldn't swear to the name of the doctor.

Isn't it your duty as an investigating officer to know who your witnesses are? I know who the witnesses are that were there during the entire time; the doctor came in when about half way through and left before she finished.

Don't you usually know the attending physician when you are taking a dying declaration, isn't that your custom as an investigating officer? Can't always get a doctor.

When one is available, don't you? I didn't think it was necessary, no.

In other words, you don't know that the rule of law is as an investigating officer that the person making the dying declaration has got to know that they are dying or believe they are dying and got to be actually dying, don't you know [fol. 140] that that is the law to get in a dying declaration? I know what I told her and I know her answer.

I thought you said a while ago you told her her doctor said she was likely to die? I did tell her that.

Did the doctor tell you that? I told her that her doctor told the chief of police.

When the doctor was in there and you wanted to get that across to her why didn't you turn to him and tell her doctor to tell her she is fixing to die? At the time I was in there the doctor was making an examination and when I was taking this statement, talking to her about this, the doctor left immediately to go see the other woman.

The doctor was attending to his business of medicine and you were attending to your business of investigation, you didn't bother him when he was doing his medical business but then when it came your time to do your investigation, you didn't call him in, did you? He was in there.

You didn't call on him for his services—you have been in cases before where you have had dying declarations involved? Yes.

What I want to know is, why you didn't call the doctor in there when he was in the hospital available and when he actually passed through the room? The doctor was in

the room. I asked him the question. I had been told what he had said, he or some other doctor, as I have told you before, being a stranger in town I didn't know which doctor had made the statement to Mr. Ellis. He simply told me they were in a critical condition and desired me to go up there.

[fol. 141] It would appear to me that if you were a stranger in town that would be all the more reason why you would write down the names? I did write down the names of those present during the entire time.

If the evidence was based on the fact that she was conscious of a dying condition and that the only way you knew it would be through the doctor you would certainly put down the name of the doctor? It is not necessary that it should only be through a doctor that she would be conscious of a dying condition. There were other people in the room that heard her make the same groans and when I asked her the question did she realize the seriousness of her wounds and she said yes and when I asked her if she knew she would probably not live through it and she said yes and when I asked her to be careful and not to leave out anything at all, I explained to her, I even told her I was sure she didn't want to go to her reward and have the blood of some innocent person on her because she failed to make some statement and she said yes and then she began to talk and I began writing and during that time the doctor came in and he put the probe into her abdomen about 14 inches down into her abdomen and as soon as he took it out I asked him what was her condition. He did not answer my question one way or the other, he went on out to the other room.

He was there available, did you go and talk to him and ask if she was in a dying condition? I had already been told that she was.

By whom? By the chief of police in this town, who had told me that the doctor made the statement to him.

[fol. 142] Did you hear the other one was in a dying condition too? I heard that both of them were.

The other one didn't die? No, sir. She made a statement to me, though, as if she had.

She thought when she made that statement that she was going to die, the other one? I believe she did, yes.

Have you got that statement? I turned it over to the chief of police, he has it.

You don't have a copy of it? My only copy is in the file in Atlanta, the first one I gave to him.

You could get it at this time by long distance? Yes, I could get it.

You turned the other over to the chief of police here—what did the other statement say? I couldn't swear the exact words, it said the virtually same thing.

You took it down? Yes.

Do you remember everything that occurred in connection with the taking of it? I don't remember every word she said.

Tell me substantially what she said? Substantially the same thing that is in this one. She said she was next door at the time Mr. Stembridge came up and she saw them on the porch and came over. When she arrived there on the porch there was a scuffle. She heard Emma say that Mr. Stembridge had on brass knucks. I asked her if she saw the brass knucks; she said she did. She said she heard Mr. Stembridge make a statement to her, "What business is it of yours?"

To whom? To Emma. She said she saw Emma go into the house. She said she followed her.

[foi. 143]—She followed Emma into the house. No, behind Mr. Stembridge, Mr. Stembridge followed her and she came in behind. She told me she was shot in the back.

By whom? She told me Mr. Terry shot her.

When did she tell you that? The night that I was talking to her.

Put it in her dying statement? What she thought was her dying statement.

That was the same night? Yes.

After she was shot? Yes.

Go ahead? She said she tried to get to them, to the people that were fighting and was shot again. She said she went out to the back door and saw Mr. Stembridge and Mr. Terry driving off, when she went out the back door. She saw them driving off when she went out of the back door or saw a car? Saw a car.

Did she tell in there the same thing that this one told, (reading "Mary ran where I was and pulled him loose from me and he shot me in the hand and then he shot at Mary," that is what Emma Johnekin said? That was what was in her statement.

Did Mary Jane tell you that night that she came in there and she ran over and pulled Mr. Stenbridge off of Emma and Mr. Stenbridge shot her and then shot at Mary Jane? I would have to see my statement or the statement she gave me to be sure about it.

You looked for all material discrepancies in this case as you were investigating it, didn't you? What I was able, yes.

If there was that big a conflict between the two witnesses in their so-called dying statements to where one said [fol. 144] that "I got in a tussle in there and Mary came through and pulled the fellow off me with the gun and then he shot me in the hand and turned and shot at her," that is the statement made in here, and if the other made the statement, "No, I walked in there and was shot in the back and didn't go around them and went and laid down on the back table", wouldn't you notice that or would you? The other witness is here, you may question her as to what her statement is—yes.

I have but you said you had the statement from her? Yes.

She said she didn't make one? She did.

If that statement is made, Mr. Jones, I would like very much to have it in court tomorrow where we can get this thing cleared up—did you say she was under morphine when you were in there? I don't know whether she was or not.

Did you ask her doctor? You talking about Mary or Emma? I was talking about Emma? I was told by the nurse that nothing had been done to her.

Did you ask the doctor? No, I asked the nurse.

Did she have one nurse assigned to her or a general nurse? That was a general nurse.

Don't you usually when you take a dying statement see that they are not doped up? She was talking to me as any person that knew what they were saying.

In other words, you were satisfied from your medical ex-

peritence that you could pass on to her? I have not said I had any medical experience.

I know but you were satisfied in your judgment you could pass on it?

[fol. 145] I was in a hurry to get into the room.

Did you go out and investigate the house out there? Yes, I went to the house.

Did you get all the bullets? No, I didn't get them. When I arrived there the door was locked, the house was closed, I had to come back to town.

That was the night of the shooting? Yes.

When did you go back? I went back the next day.

What did you find out there? I found two bullet holes in the wall, one in the second room on the right wall, one in the third room on the right wall.

Find the bullets? No, the bullets had already been bound up.

Both of them? You mean the bullets in the wall?

Yes? They are still in the wall.

Two bullets still in the wall? Yes.

Don't you think this jury is entitled to that evidence in this case? I think it would be the place of the court or the city police or some one else to recommend that I go out and tear down that wall to get those bullets.

Would it be all that much of a problem? Solid wall you would have to cut through to get inside.

Isn't the wall all changed up? There is a hole in the wall.

Would it be a tremendous problem? It would be expensive.

Why don't you have those bullets in the trial of the case—generally we have all of them and generally the state produces them and generally the people that investigate it and bring it in front of the grand jury and in the courtroom, I am asking why they are not here now? It would be the place of the sheriff or the police or the court to rule [fol. 146] on that and go and remove them out of the wall, inasmuch as I don't feel responsible for the expense of tearing down somebody else's wall.

How much do you think it would cost? That is beside the point.

You have had a ballistic report made and have gone to end of trouble to find out about the evidence, yet you leave two holes in the wall—wasn't it your job to investigate it and get the bullets? I was not the only one investigating. That would be for the court or the city or the county to decide, not for me.

You usually get all bullets, don't you? Those that I can get.

What else did you find out there, found two bullet holes, what about that one in the door facing? I saw a hole in the door facing, that had been removed.

You mean the bullet had been removed? The projectile, yes.

Did it look like a bullet hole? Yes.

You saw three bullet holes? Yes.

They could have been removed? It is possible. However, I did not see any marks on the wall. I went to the other side and looked to see if they came through.

You made a superficial examination and came back and told the Solicitor and Sheriff and all the other people that were prosecuting this case that there was still two bullets out there? I am sure there were.

They said, "Let this go", is that correct? I didn't hear them say let it go.

[fol. 147] What was their reaction when you told them there were two bullet holes out there that the bullets had not been gotten out of? They know they are there, the police had seen the holes.

They didn't attach any consequence to those two bullets, is that correct? I couldn't answer.

You didn't attach any consequence to those bullets, they might not help convict or clear a man so far as you are concerned? They might or might not do either.

You mean to say they might not have any bearing this case if you could prove what gun they were shot from? I said they might or might not.

I ask you do they or not have any bearing on this case? They do.

What else did you find out there? Furniture in the room.

Did you find a bullet in the bed? No, sir.

Did you find a bullet in the back of the stove? No, sir.

In other words, did you handle all the bullets, did you have a ballistic report made? Yes.

In that ballistic report of course you have not provided us with any knowledge about what it contained? I have not.

We don't know what kind of guns these bullets came out of, as far as you are concerned? I don't know that you have any knowledge, no, sir.

There were six hulls out there that you sent in? That is right.

What did the ballistic report say about those six hulls? The report is to be mailed or has been mailed to the chief [fol. 148] of police in Milledgeville; I haven't read it.

You mean to say you don't know what is in the ballistic report? I mean to say that I took it to Dr. Jones' laboratory and requested them to mail the answer to the chief of police in Milledgeville. I was told by him what it contained but would that be permissible.

Mr. Baldwin: We have no objection to your telling.

I want to know what that report shows. If you don't know what the report shows then I would like to have testimony but if you know what the report shows I would like your testimony? All I know about it is that it was to be mailed to Baldwin County.

You have never seen the report? No, sir, never read it.

You have not seen it since you have been here in Milledgeville? No, sir.

You are the chief investigator in this case and you have never seen the ballistic report? Why do you say I am the chief investigator in this case?

You are called in the case, you are an expert, you are with the Georgia Bureau of Investigation and you are the expert in the case.

That is why I say you are the chief? (No answer)

Redirect examination.

Mr. Evans, drew this picture out there, he must have been in this house too? Must have.

Has any body got any objection to him taking those bullets out? No, sir, I certainly don't have. If the county will pay for it I will be glad to take out the bullets.

[fol. 149] There is a bullet now that has not been cut out of the wall back in the third bedroom? Yes.

I will ask you whether or not that was right over the trunk? Yes.

Was that over the trunk where Emma Johnkin said she was sitting when she was shot?

Mr. Evans: I object.

By the Court: I sustain the objection to what Emma Johnkin might have said.

As to this ballistic report, did you hear what Dr. Jones said about these bullets and these hulls or the pistol they were fired from? Yes.

Mr. Baldwin: Do you want me to bring that out? You are at liberty to ask him. I will bring it out for you if you don't want to bring it out yourself.

Mr. Evans: I think we are entitled to the ballistic report, because if this gentleman is as inaccurate on matters relating to medical testimony; we would hate for him to pass on it. We are entitled to the ballistic report.

By the Court: What Mr. Jones might have told this witness of course would be hearsay and inadmissible.

Mr. Baldwin: As far as that is concerned the report would be hearsay; the only thing would be admissible would be Dr. Herman Jones.

By the Court: I rule the testimony is admissible.

Recross-examination.

Generally when you have a ballastic report favorable to the state you bring it down? It is generally mailed to me. Also as a general rule they bring it down themselves. [fol. 150] if they are to come.

If the ballistic report showed the bullets were fired for instance from Mr. Terry's gun the report would be here as evidence? If it had not been mailed it would be.

You know it is available and if the state wants to bring it in here they can bring it in here to present to this jury? I am sure they can if they get the report from Dr. Herman Jones.

(Examination continued following morning)

Mr. Jones, how long have you been with the Georgia Bureau of Investigation? Since September of last year.

What training did you have to fit you for the work of any investigating officer for that group? I was with the department of Labor, State Department of Labor, as a claim investigator; prior to that with the Retail Credit Company as an insurance investigator. During the war and before my entrance into the service I was with the Macon police Department as an auxiliary police.

You were in Milledgeville when this case occurred? That is correct.

You were assigned to this case, were you not? Yes, I was called.

You immediately went into your duties in the investigation of the case? Yes.

Now as an investigator of the G. B. I. as I understand it your duty is investigating to get evidence to bring into court? My duty is to assist sheriffs, municipal governing authorities and superior court judges.

Who was in charge of the obtaining of evidence in this case? I didn't hear anyone placed directly in charge of [fol. 151] obtaining the evidence. All of us who were working on the case secured what evidence we could.

Surely you had some program, who was taking the directive? All of us were working together. I take my orders from the sheriff or chief of police in any case I am working on.

Did the sheriff or the chief of police either one take the lead in this case? If there was any lead in the case it would be the chief of police.

In other words, the chief of police was the directing officer in this case? Yes.

You were answerable to the chief of police? While I was on that case, yes.

What duties did he assign to you? To assist him in the investigation.

In what manner? He requested that I secure statements from the two women in the hospital.

What else? He requested that I have the gun and the projectiles and the shells analyzed.

Did you do that? I did.

Did you get the ballistic reports? The ballistic reports, in order for them to be carried to the Fulton County Laboratory, some arrangement for payment must be made. Mr. Marion Ennis was contacted as county attorney. I told the Fulton County Laboratory to direct the bill to Mr. Marion Ennis. So far as I know the original copy was sent to him also. I did not receive the original copy, I did not wait there until it was completed.

I thought you said yesterday that the ballistic report [fol. 152] would be sent to the chief of police? The chief of police has not received it, so he said, and I said so far as I know it might have gone with the bill; I have not seen it.

The bill was your responsibility—what effort did you make prior to yesterday to determine that the ballistic report was available? None.

Why, sir? Because I had a copy that was sent to me, as I told you yesterday, that I haven't read.

Have you got that copy now? No, sir, I don't have it with me.

Where is it? I can secure it in a few minutes.

Mr. Evans: Your honor I would like for the court to recess long enough for this gentleman to get a copy of the ballistic report.

By Witness: It is not the original.

Mr. Evans: That is all right, a copy of the ballistic report would be satisfactory to us.

By the Court: All right, we will take a recess to get it.

Mr. Baldwin: (as witness retires to get report): This ballistic report speaks for itself. We are willing for them to have it but we want them to put it in evidence if they want it in evidence. I don't think this man has got any right to read it; it would be hearsay. We offered to give it to them yesterday. Now we give it to them we want them to put in evidence if they want it in evidence. In other words, I want them to put it in evidence instead of me.

By the Court: What do you say, Mr. Evans?

(Mr. Evans calls for report from witness and the court [fol. 153] directs the defendant's counsel should have it.)

By the Court: Mr. Jones, that report was not made by you?

By Witness: No, sir, I assume that the original was sent to some officer or to someone in this county.

Mr. Evans: (After reading report) May it please your honor, we want to submit this report in evidence.

By the Court: Well, the defendant has not opened yet.

Mr. Evans: I mean when the time comes.

Mr. Baldwin: No objection.

By the Court: With that understanding, that you will tender it in evidence, I will permit you to cross-examine this witness with respect to it. Of course, if it is not introduced in evidence—

Mr. Evans: We will offer it.

Have you read this report? No, sir.

Mr. Evans: By all means I would want the witness to read the report before I enter on my cross-examination. (Hands report to witness who reads it.)

Mr. Jones, yesterday you testified that you knew what was in the report or that you knew what the findings were? I knew the substance of it.

Is this report the same as the substance you knew? Yes.

In other words, you knew yesterday the contents of this report, you knew the substance of the findings? Yes.

This report I notice is dated July 12, 1949. That has been a week and one day ago. When did you receive this report? About three days ago.

[fol. 454] In other words, you had this report available yesterday? I told you yesterday I didn't have the original at that time and I hadn't read a copy.

You received this report three days ago and this trial was coming up and you knew you were coming here as a witness and yet you didn't read your copy? I was under the impression that the original would be in the court room. I requested that it be sent here and I have not seen it. That is a carbon copy, as you can see.

There were several carbon copies sent out, weren't there? That is the only one I have seen.

Isn't it customary for the laboratory to send one to the chief investigating officer, one to the man who comes in requesting it and one to the county authorities contract-

ing for the investigation, isn't that true? The original usually goes with the one from laboratory when he comes down, if they come.

It is not your duty to prosecute anybody? No, sir.

It is your duty to get the truth? Yes.

Isn't it true when they make a ballistic report from the Fulton Laboratory for another county that they send the original report, I mean they are directed to send it by the investigating officer? Yes.

That they also send copies to the man who brought the material in if he is a qualified investigating man and of course he always is or he would not bring it in—did they send him one? If he requested it.

Did you request one in this case? Yes.

You got it? Yes.

[fol. 155] They also send a copy to the county authorities along with the invoice of payment? I believe that is correct, I would not say positively.

When you did not discover this original, you mean to say a thing as important in this case, anybody says "Where is the original", didn't that disturb anybody in this prosecution? I did not hear anyone mention it.

Do you mean you were coming here under the theory in this case that Sam Terry fired four of these shots and it didn't occur to you that you ought to have the ballistic report? I mean this, I mean I received my report about three days ago in Madison. Milledgeville is a little further than Madison. I assumed someone here in Milledgeville, Baldwin County, has the original copy. I haven't been able to find it and I still haven't been able to find it.

I believe this report says that you were the man that delivered the stuff? That is correct.

As a matter of fact it is headed—

Mr. Baldwin: I object to leading him.

Mr. Evans: We are going to introduce it in evidence and for the purpose of cross-examination I have got to have it available.

Mr. Baldwin: Let him introduce it now.

Mr. Evans: All right, we introduce it now.

By the Court: The document is in evidence.

"Laboratory report on Marion W. Stembridge, white

male", then "Emma Johnkin, black, female, deceased, Mary Jane Harrison, black female, wounded, officer Jimmy Jones, Georgia Bureau of Investigation, Milledgeville, [fol. 156] Baldwin County, Georgia. On July 8, 1949, we received in the laboratory in person from Mr. Jimmy Jones, Georgia Bureau", etc. Did you deliver this stuff up there? Yes.

Did you ask them to make the analysis of it? Yes.

Did you tell them where to send the report? Yes.

Whom did you tell them to send it to? Chief of police in Milledgeville.

Did you ask the chief if he got the original? Yes.

What did he say? He had not received it at the time I asked him.

When did you ask him? I asked him the next day after I received mine.

Then did you ask him the next day? I don't remember. Asked him the next day, I don't remember asking him the next day.

Have you asked him since yesterday? I asked him yesterday afternoon after court.

What did he say? That he had not received it.

Under the theory of this case Mr. Sam Terry shot some times, didn't he shoot some? That is the theory.

That is what your evidence is? That is what one of the witnesses would say.

Will any more of the witnesses say that? Yes some more of the witnesses will say that.

In other words, that is what you got your case based on? Yes.

All we want is the truth,—

Mr. Baldwin: If your honor please, this is an intelligent witness. I don't think Mr. Evans has a right to argue with him. I don't think he has a right to tell him that all he [fol. 157] wants is the truth. He knows what his duty is. We offered to tell you yesterday what was in the report.

By the Court: You will ask the witness the question and not argue with him and Mr. Solicitor; let's proceed in an orderly manner.

Was it your duty to bring this report here yesterday?

Was it my duty to bring the carbon copy in here yesterday?

Yes? I didn't think it was, to bring the carbon copy.

Was it your duty to disclose that you had a carbon copy yesterday? I would have if I had been asked.

Are you stating that I didn't ask you for your copy of the report? Yes, I didn't mean you asked me if I had a copy of the report, you asked me if I had read the report and I told you, no.

In other words, if I asked you if you had a copy of the report then the reason you didn't answer me was because you had not read the report, is that correct? I knew the contents according to what they told me.

When you found out that the chief of police down here didn't have a report did it occur to you that you might need to do something because you were the man to see that he got the report, did it occur to you that you should do something to see to it he got the report? I assumed that surely he would have it by Monday.

When was that, last Monday? No, sir, I received mine three days ago.

You found out he didn't have it according to your testimony? I found out next day.

Then what did you do to get the original? I assumed he would have it. I received mine in the evening mail; I [fol. 158] asked him next morning and he didn't have it.

Then what did you do? I went about my work. I was not concerned with it, I thought he would receive it that afternoon.

Night before last when he had not received it what did you do? I didn't say night before last that I talked with him about it, I said yesterday afternoon after court he told me that he had not received it.

Wasn't this report important enough to the state's theory in this case for you to have been on your alert and to have asked him? I have seven counties in this territory, I didn't return here from time to time. I asked him about it until court time yesterday, I asked him if he received it and told him I had received a carbon copy and I didn't see him again until court time. I assumed that it would be here or that he would find out about it. In other words, inasmuch as I have

work in seven counties I don't come to Baldwin county every day.

Did you consider it material to this case whether all these bullets were fired from Marion Stembridge's gun or whether some were fired from Sam Terry's gun? Or some other gun, yes.

In other words, if all these bullets were fired from Marion Stembridge's gun in your opinion what are some of the witnesses doing that say that some were fired from Terry's gun? If all the bullets were fired they say, inside of that house were fired from the same gun then some of the witnesses would be lying.

And whose duty is it to determine whether or not those bullets were all fired from the same gun or different guns? All of the bullets cannot be secured.

[fol. 159] How do you account for that, the ones that are not secured, tell me how many are not available to this court? There should be three or four.

Not what there should be under your theory but what there is under your evidence—under your evidence how many are not available to this court. I know where two are, they are in the wall. According to an X-ray that I saw there is one in the body of Mary Jane Harrison.

That makes three? Yes. If there is another one in her body, I don't know it; there may be.

In other words, you say that there is three? Yes.

Now, do you know whether or not somebody has got those two bullets out of the wall, you are talking about? There is no evidence that they have.

What is the best evidence of whether they have or not? The wall would have to be removed in some way.

Whose duty was it to do that? It would be the duty of some investigating officer.

You mean some investigating, either you are some other investigating officer? If they have to be removed, yes.

Then you would know just exactly what happened to all bullets, wouldn't you? All that were found.

Then you would analyze them if they were all from Mr. Stembridge's gun what would the witness be that said there were some from Mr. Terry's gun? If all the bullets that can be accounted for, including the ones in the body

of Mary Jane Harrison, then some of the witnesses would be lying.

In other words, you are an investigating officer, it is your business, you have had a lot of experience, you have [fol. 160] done it in the insurance field and the rest of it, I am asking you when you say as to the theory of this case of Sam Terry doing part of the shooting wouldn't you immediately say the thing first to do is to find the bullet that didn't have the ballistics that identified it with the pistol of Marion Stembridge and that would probably be the bullet we were looking for? Yes.

So with that in view you sent for this report? Yes.

Did you find any bullets there except that had been fired by this identical gun right here? No, sir.

They were all shot by this gun? All that we found.

Now, you didn't think it was worth while to go further and get one out of the wall because time after time they have said that Marion Stembridge put his pistol right down there and that is where he shot right through the wall, so you didn't feel like it was worth while to get that one, did you? I think we have sufficient evidence to show which gun fired that projectile.

Which one fired it? That one.

This gun? Yes.

So you really didn't see any use to take it out of the wall? It was not a matter of use. If that projectile had gone into the inside of the wall and struck a knot it might be in the ceiling or under the ground or most any place and one might remove the entire house and never find the projectile.

But you didn't attempt to remove a little plaster board enough to look in, did you? No, I didn't attempt to remove the board.

Yet you come in here and attempt to indict a man for murder without taking the trouble to look through a little [fol. 161] plaster wall that would not cost may be a dollar to have it done? I don't know how much it would cost to remove the wall and perhaps the entire section of the wall.

You said awhile ago perhaps tear down the house? You can't positively say that it would be lying just beyond that wall.

How much do you think it is worth to defend a murder case? It is worth a considerable amount.

Do you say it is in proportion to take out a piece of wall to see whether a bullet is there or not? It is not my duty to remove a person's wall.

Whose duty is it? It would be for the city or county to request it.

It would be somebody's duty on the investigation force? Yes.

It has not been done? It has not been done.

I am going to read this report? "On July 8, 1949, we received in the laboratory in person from Mr. Jimmy Jones, Georgia Bureau of Investigation, one 380 calibre Colt automatic pistol 110946 with seven loaded cartridges in the clip and one in the barrel." So they say you delivered this pistol to them, this pistol is the one described in this report? That is correct.

And you delivered it just as it was found on Mr. Stenbridge? Yes.

"Pistol said to have been taken from Marion W. Stenbridge, white male. One green glass bottle labeled 'Six empty cartridges, found in the Harrison residence, Oconee Heights 3-8-49', containing six 380 Remington U. M. C. fired shells, initialed inside shoulder of shell E. A. E."—were these the empty cartridge shells? Yes.
[fol. 162] Six of them? Yes.

They were the ones delivered to you with the statement they were picked up inside the house? Yes.

"One green glass bottle labeled 'three bullets found in the Harrison residence in Oconee Heights, 3-8-49, Stenbridge case', containing three fired 380 projectiles, initialed on the base E. E." Were these delivered to you? All four of these bottles were—if that is the three that meet the description.

That is the three that were picked up on the floor of the dwelling according to the evidence. "One green glass bottle labeled, 'From Emma Johrikin's right arm, Richard Binion Clinic, Dr. Woods, 3-9-49, Stenbridge case', containing one fired 380 projectile, initialed E. E. on the base." That was one delivered that supposedly came from her right arm? Yes.

"One green glass bottle labeled, 'One bullet removed from Emma Johnkin's pelvic bone, 3-11-49, Stembridge case', containing one 380 fired projectile, initialed on base E. E. Service requested:—To compare Colt automatic 'A' with 'B' shells, 'C' projectiles, 'D' projectile and 'E' projectile." In other words they wanted to know if all those bullets and all those hulls came out of this gun? Yes.

That is the service requested? Yes.

"Results: Tests were fired evidence Colt 'A' into recovery box, using 380 Remington automatic ammunition. That shells were placed under comparison microscope with evidence shells 'B' and an examination was made". As I understand it they were loaded with the same kind of cartridges, shoot it into the test box and then they take the one shot into the test box and one of these they are [fol. 163] going to compare it with and put under a microscope and look at the rifling on them? Yes.

Is that as accurate as finger printing is? Yes.

Just as accurate and conclusive—"Upon completion of our examination we find that all six shells did match with the test shells. It is therefore our opinion that this evidence pistol 'A' did fire all evidence shells 'B'. Test projectile was placed under comparison microscope with evidence projectiles 'C', 'D', and 'E' and examinations were made. Upon completion of these examinations we find that 'C', 'D', and 'E' projectiles did match with test projectiles. It is therefore our opinion that evidence 'A' automatic pistol did fire all evidence shells and projectiles 'C', 'D' and 'E'. Is that correct? Yes.

And you knew that yesterday? Yes.

Did you know that at the time you went to the grand jury? I didn't go into the grand jury room.

Why didn't you go into the grand jury room? I was not called.

Did you know it at the time the grand jury met? I knew of my own knowledge.

Did you pass it on to other people? Yes.

In the prosecution? Yes.

It was known when it went into the grand jury room? Yes.

Mr. Jones, do you have any feeling at all that you have a duty to the citizens of Georgia who are accused of crime when you discover that there is no reasonable basis for prosecution? Certainly.

You say you have a feeling for them, do you think you have a duty towards them? Certainly.

[fol. 164] Do you think Sam Terry ought to be indicted? From the amount of evidence you have read there, no, sir, but the feelings of the people who have been shot must also be taken into consideration.

The feeling of the people who have been shot or the pocketbook of the people that have been shot—do the feelings of the people who have been shot justify the prosecution of an innocent man? Not at all.

What do you mean by the feeling of the people who have been shot? I said, Sir, according to that report if all of the evidence that could be found were based entirely on that report then certainly he should not have been indicted for attempt to murder.

Is there any higher evidence than this ballistic report that you know of; is there anything more accurate than the finger prints of a bullet? That ballistic report does not contain all of the projectiles, neither does it have all of the shells.

Whose duty was it to get it? I couldn't get the projectile out of the body of a person; as you told me yesterday, I am not a doctor.

There is a doctor there, isn't there? Yes.

He is available? Yes, but he refuses to do it.

Refuses to do what? To remove the projectile.

He is available for testimony, isn't he—you are testifying about a doctor, I am asking if a doctor is available? I suppose he is.

Were you ever in a case where a lawyer had tried any harder to get the state to bring in evidence than I am having to do in this case? I can't answer that.

[fol. 165] Now would you recommend indicting Mr. Sam Terry as an investigating officer until you had further evidence than is in this case? Would I recommend indicting him for what?

For what? I am not familiar with all the law books in

this state, I am not a lawyer, and I understand that a principal in a case, whether he actually pulled the trigger or not, may be indicted.

You have got a sense of justice, have you? Yes.

You said a while ago that you had some duty to the people who were shot, had to make some allowance for their feelings. I want to know a little bit further what you meant by that statement? I mean, sir, that there are people who are willing to swear that they were shot by a certain person and of course their sworn statement must be considered also.

In other words, you don't want to give any offense to them by saying that the police said that they were a lie? It is not a matter of offense—we don't have the bullet that went into her body.

She said four of them went in there? I was not in here when she made her statement.

She told you, didn't she, didn't you investigate and get a statement from her? Yes.

Didn't you waive it around up here yesterday? I didn't produce it.

You said you knew the contents? Yes.

How many times did she tell you that Sam Terry shot her? Four times.

Are you particularly handicapped by that one bullet if you had four that was shot into her, what about the [for 166] other three? If I knew I had the other three, no, sir.

You don't have them? I don't know that I do.

You don't know whether they are in those green bottles there or not, do you? No, sir.

Did you get cartridge hulls from Mr. Terry's gun? Those are the only hulls we had.

They are all from Mr. Stembridge's gun, aren't they? Yes.

You don't feel like any of Mr. Terry's bullets could be in the wall now where it would be worth while to tear the house down to get them? I didn't feel it was my duty, unless I was requested.

That night who reported it to you? Chief Ellis.

What time? Must have been around 7 or 8 o'clock.

What did you do? I immediately went to the hospital. What did you ~~do~~ after you got there? I asked the location of the women who had been shot.

Then what did you do? I went to the room of Emma Johnkin.

And got this thing that is purported to be her dying declaration? Got the statement from her.

Then what did you do? I went into the X-ray room where Mary Jane Harrison was.

What did you do in there? Got a statement from her.

Then what did you do? I went to type those statements.

You mean that you were down here as chief investigator in this case and that you got through making those statements that they gave you in there, clues and direct evidence to the fact that you could go out there and find the bullets shot by both these guns and you took the time to type these statements? I went out to the house first [fol. 167] but I couldn't get in the house.

Did you ask for a key to the house? No-one at home.

Where were they? They were on the way to the hospital.

Were they on the way or at the hospital—let's be truthful? They were not all at the hospital when I left—if they were I didn't see them.

Who did you ask for the key to the house? I was told when I left that George was at the house and I went out there with the intention of seeing him there; when I arrived George was not at the house.

You are used to going places and not finding the party you want, so what did you do? Went back to town.

Saw George? No, I didn't see George at that time.

Did you look for him? Yes.

You couldn't find George? I didn't find him that evening.

Where was George all that evening? There were also about six other persons working on the case at the same time and I didn't take charge of the case.

Who was supposed to investigate the house? I didn't hear anyone assigned to the house.

Why didn't you take charge? I work for the persons who call me in on a case to assist them and not direct them.

Did it occur to you that somebody had to go out there and check the house? The house was checked.

That night? I don't know whether it was that night or next morning.

What did you do then, you couldn't find George, you knew that was what ought to be done? I thought that some- [fol. 168] one was looking for him and would locate him.

There was not any question when you got through talking to the people who were eye-witnesses to the crime, the two that were shot, from what they told you you knew the next thing that ought to be done was to go out to the house? I went out to the house. I came back to town from the house and went to the city hall to attempt to locate some of the other officers who were working on the case and Mr. Stembridge was there in the city hall. He requested me to go with him and I wanted to get his side of the story, I went down to the county jail with him and stayed there for quite sometime, talking with him. At the time I left the county jail I assumed that someone had already completed the investigation on the house.

In other words you checked with the people who had been shot, checked the house and couldn't find George, the house was locked and you didn't feel like it was important enough to force the door or pull the window, so you came back to town looking for George and you couldn't find him, then you went to the city hall and Mr. Stembridge was in jail there and you wanted to hear his side of the story? Yes.

And you went in there and he told you he would like to make a statement? Yes.

So he asked you to take it down? Well he was being transferred from the city hall to the county jail and there was some time elapsed between that transfer and I said I would during that time and went over to the county jail with him.

[fol. 169] As a matter of fact he asked you to stay with him? Yes.

And you rode with him from the city hall to the county jail? Yes.

Do you remember why he asked you to stay with him? Yes, he wanted me to hear his side.

You went down to the county jail and he sat there and

told you he wanted you to hear his side and he wanted you to take it down? I didn't hear him say that he desired me to take it down. I did make notes.

You did take it down? Yes.

He of his own volition told you his side? He told me what his side was, yes.

Did he tell you that they had a gun? Yes.

Did he tell you that he did all the shooting? Yes.

That immediately pointed to a conflict of the evidence and a bad one? Yes.

What was your reaction as to what was to be done? I went to see Mr. Terry after I left him.

Did you get a statement from Mr. Terry? Not a signed statement, I did talk to him.

Did he say he did any of the shooting? He said he did not.

Then did it occur to you that somebody had to go out there and get hold of those bullets? Yes, it did.

Then what did you do? The bullets were being looked into.

By whom? By Mr. Ellis or Mr. Beckum I believe was on at the time.

Did Mr. Beckum go out there that night and get them? [fol. 170] I don't know whether he did or not. By the time I left those two people I had another appointment in another county and I met that appointment and came back early the next morning and that at that time the bullets were in their possession.

Did you feel any duty at all as an investigating officer, as an impartial person trying to find the truth to see to it that a protective cloak was thrown around this man Stembridge and this man Terry as far as tampering with that evidence was concerned that was out there in that house without any protection? I didn't see how and I don't see how the shells or projectiles that were given to me later could have been tampered with.

I don't think they were, I think that is evident, but could some substitutions have been made in there and handed to you? That is possible.

And the longer you left them out there the more possibility it is after a crime is committed, the longer you stay

away from a place without gathering up your evidence the more chances there are of tampering with it? That is true.

Don't you think investigation officers have a duty and it ought to be a privilege to throw a mantle of protection around anybody accused of crime, particularly murder, by seeing that those things that reasonably could be done are done? If I were in charge, yes.

In other words, if you had been in charge of this thing, if you couldn't have found George, would you have broken the door down or knocked a window pane out? I probably would have got in.

I want to be fair, you are an investigating officer, in that work probable right or would you actually have done [fol. 171] it, I want to know what you would have done, would you probably have done it or would you have done it? It is almost impossible to say inasmuch as I didn't.

I know you didn't because you say you didn't feel like you had authority to do it but if you had been in charge of this investigation you would have gone into the house if you had to saw the door down? I can only say I probably would.

Then you took Mr. Stembidge's statement—you have his statement? I have it in long hand.

Would you let me see that statement? It is not in this room.

—Mr. Evans: May it please your honor, may I get that statement.

By the Court: If it is available.

(After witness brings in statement) This is the statement that he gave you? Yes.

Didn't he make a second statement to you later on? Not one that I wrote down.

Did he ever make any other statement to you? No, sir.

In other words that statement there is substantially what he said all the way through? Yes.

There has been no change in his position? Not since the last time I talked with him.

Now, Mr. Jones, are you trying to hold anything back in this case? No, sir.

Mr. Jones did you offer to tell them this ballistic report yesterday evening? Yes.

They refused to let you tell it? Yes, I was there when they completed the test—didn't type it up while I was [fol. 172] there.

Was there any secret of the fact that you got the ballistic report from them? No, sir.

Did the county authorities tell us to make it and pay for it? Yes, Mr. Marion Emnis did.

That was before he was employed in this case, but he was county attorney and it was necessary for us to ask him? That is right.

Somebody has to pay these experts to make these examinations? Yes.

The county always does that, do they not? Yes.

I believe you said something about you were in there when the doctor probed this wound in the girl's stomach? Yes.

That was the girl who died within two days? Yes.

Her name was Emma Johnnekin? Yes.

What did he do about probing the wound in the stomach? He had a round piece of wood about the size of a pencil-lead or perhaps a little larger and a swab of cotton on the end and he dipped that in some solution, probably methylene or something of that sort, and showed us the path of the bullet.

How did he show it to you? He put it into her body and ran it out.

Where did he put it into her body? In the abdomen.

Was there an opening for him to put it in? Yes.

What opening was that? There were three openings in her abdomen.

Was that the bullet hole? Yes, evidently.

How far did he run the stick down following the path of that bullet and which way did it go—come out here and [fol. 173] show it on me? He followed the stick during its entire length, beginning here, looping through a roll of fat and then back into the abdomen, for the entire length of the probe.

How long was the probe? At least 12 or 14 inches.

Which way did it go? It ran down in that direction

(illustrating on Solicitor), to that bullet would 14 inches on down.

What is in your stomach there? Intestines.

Was that bullet obliged to burst a bunch of intestines? I couldn't say that.

If it goes right on through for 14 inches don't it have to go through something? It seems logical to me.

Mr. Evans: I object to that. This gentleman has tried to state that he is not a doctor and not qualified to give medical testimony.

By the Court: I sustain the objection. That would be a conclusion for the jury to draw.

Did it go diagonally right through her stomach? Yes. Fourteen inches? Yes and if it had reached the bottom at that time I couldn't say: that is as long as the stick was.

You know she was dead a short time after that? Yes.

Now, Mr. Jones, from your seeing that done and your examination of her what would you say was the bullet that caused her death in your opinion? That bullet in her abdomen.

Now are you fully aware that Mr. Evans knows about these two bullets in the wall? Yes.

You know he knew about it yesterday? Yes.

[fol. 174] He made this picture sometime ago, he knew about it then because he put them on the picture? Yes.

Was anybody holding him back from getting them out of the wall? No, sir.

Recross examination.

I will ask you, sir, is it the duty of the state to prove its case against the accused? It is the duty of the state to prove its case.

Redirect examination.

It is our prerogative to know when we have enough evidence to travel on? Yes.

State rests.

Testimony for the Defendant.

T. A. MADDOX, sworn for defendant.

Direct examination by Mr. Ennis.

Your name is T. A. Maddox? Yes.

Mr. Maddox, where do you live? Eatonton, Putnam County.

What kind of business are you in? Dairy.

How long have you lived in Putnam County? All my life.

Do you know Mary Jane Harrison? I do.

I will ask you whether or not she was Mary Jane Cooper before she married George Harrison? Yes.

Do you know her general character in the community? Well, mighty bad.

Would you believe her on oath? No.

No cross-examination.

[fol. 175] W. J. ROBERTS, sworn for the defendant.

Direct examination by Mr. Ennis.

What are your initials? W. J.

Where do you live? Putnam County.

How long have you lived in Putnam County? I was raised in Putnam.

Do you know Mary Jane Harrison? Yes.

Was she a Cooper before she married? Yes.

Do you know her reputation in the community in which she lived? Yes, I know a little something about it.

Do you know her general character? No, sir.

Is her reputation good or bad?

Mr. Baldwin: He says he don't know her general character.

Do you know the reputation she bore in the community in which she lived? Yes, pretty bad.

Would you believe her on oath? No, sir.

Cross-examination.

Has she ever had any kind of case in court up there that you know of? Eatonton?

Yes? Mary Jane?

Yes? No, sir.

S. L. TERRY, sworn for the defendant.

Direct examination by Mr. Evans.

Are you Sam Terry? Yes, sir.

Are you the coroner of this county? I am.

Mr. Terry, are you employed by Mr. Marion Stembridge?
I am.

On March 7th, I know that you recall the shooting that occurred and I would thank you if you would tell these gentlemen of the jury what happened on that day? Gentle- [fol. 176] men of the jury, Mr. Evans has already told me the date, I will give you the time, the approximate time. It was late in the afternoon. I accompanied Mr. Stembridge out to Oconee Heights to talk with Mary Jane Harrison. Her two sons, Richard Lee and John-y Cooper, had a long past due account, one of which they neglected to attend to, one that they persistently stayed away from, refused to discuss it one way or the other. When we got to the house we found two women, two negro women, and one negro man. The man happened to be John-y Cooper as I later learned, the two women Mary Jane Harrison and the woman that is dead. We got there, we both, Mr. Stembridge greeted them very nicely and walked up on the porch and I accompanied him. I stopped at the top of the steps. Mr. Stembridge went around, Johnny was facing south, there was a banister there, with his right leg up on the banister. That threw Mr. Stembridge facing me. He talked to him about his account and asked him why he was reluctant not only him, but his other brother and his mother, to come in and discuss it, saying at the time, "We never have put a hardship on you, we have carried you when we couldn't carry others, we have actually fed you. I can't understand to save my life why you don't come in, some of you and talk this matter over. I am still willing to play ball with you, let you pay it out in your own way. Now, what do you say about it?" They talked on, everything was all right, by the tone of the conversation it looked as if we would not be there but a minute or two. Finally he turned to me and said, "Sam. I had a card there, order on John-y's salary". I took a small

card, this the *the* card right here this is what I wrote, Gentlemen, wrote it out very hurriedly. I don't remem-
 [fol. 177] ber what is on there, walked over and handed it to John-y with my fountain pen, it was right there, stepped back to the top of the steps, John-y went to write it. He was sitting on the rail all the time. He went to sign his name on it. When I walked up there and carried this card there were two negro women muttering to themselves, one to the other. I don't know what they were saying, didn't make any difference to me. As soon as I handed him that, I came back to the top of the steps, I guess possibly the distance to Mr. Baldwin, not over that far, Mr. Baldwin and myself, and when he was about to sign it the negro woman on the south side or the right entrance of the house, says, "Don't sign that thing, Boy" and immediately the one on this side said, "No, you don't *don't* sign nothing." Well he hesitated for a moment, he didn't sign. She told him again, "Don't you sign nothing." Well he told Mr. Stembridge, he said, "I am not going to sign it, no, sir, I am not going to sign it. I am going to let the rest of them pay it." Mr. Stembridge said, "John-y, don't you think that you owe that to me after I have been so kind to you and your family, not only you but your family, when you jumped from one job to another and you couldn't keep it long enough and the chances were it was about something like this, that you owed somebody, don't you think it would be better for you to sign that? If you don't I am going to have to take you into court and when I do that you know what that means. It will be much more on you and big court costs and you couldn't stand that. Won't you sign it?" Says, "No, I am not going to sign, no I am not going to sign it?" and when he says [fol. 178] that he come off and his arm went up to Mr. Stembridge, and when he did that—I would like to have that diagram (diagram of the house is handed witness who holds for all to see), he was just about this distance right here from this door here. When he come off there and grabbed Mr. Stembridge that threw them at a 45 degree angle with the center of this division herein his former position. They stood there for just a moment, when this woman right here in this door says, "Look at that white

man with his hands on my boy" and she immediately turned around, she said, "You white son of a bitch, I will shoot your dam- heart out" and she kept that up until she disappeared in the back. Looked as if Mr. Stenbridge was frozen there for just a moment and also the negro man. You can imagine how I felt too. Mr. Stenbridge got up, I mean he pushed the negro back to the railing. Mr. Stenbridge looked as if he was trying to make up his mind—he ran to the door and caught the latch up, this was the entrance of it—it looked as if he was trying to make up his mind whether to run for it or whether to go down and go in there and catch her before she could shoot him, as she had already made that remark she would do. I didn't know what to do. I kind of turned as if to go as if to follow him or get ahead of him. I certainly would have got ahead of him if he had come my way, but he didn't, he shot in the room. As soon as he did that I stepped up within approximately two feet of that door and stopped, expecting the negro out any moment, to make a dive for it and which he did immediately. When he did that I was standing there with my hands in my pocket, thinking what am I going to do, what I can do. You can imagine [fol. 179] what a position I was in.

Mr. Baldwin: I object to him making a speech about "You can imagine". I would prefer that they ask him questions.

Mr. Evans: Don't use "Imagine".

Mr. Baldwin: I think it would be better to ask questions. A while ago you said Mr. Stenbridge stopped at the door jamb and then shot into the room. I think you ought to make that clear to the jury, what do you mean by that? I mean he ran into the room, I don't mean he actually made a shot—a common expression.

Now you say he went into the room—was Johnny still on the porch? That is right.

When he went into the room, did Johnny attempt to go into that same room? He certainly did.

Mr. Baldwin: I object to him leading the witness.

By the Court: Don't lead him.

Did or did not anyone follow Mr. Stenbridge in that room? Yes, the woman standing between the two doors.

Followed him in there? Yes.

Did or did not the boy attempt to follow her in? He did.

What prevented him from following in? I jumped up between him and the door.

Did you have a pistol? No, sir.

Did he have a pistol? I don't know whether he did or not; he didn't show it.

What did you do? I stood there for I reckon a second or two, and told him, "You can't come in here, don't you try to come in here." He kept making his way, he stepped back until he got even with the other door. Then he made [fol. 180] a dive for it and slammed the door to and locked it.

That was the other door? Yes.

Why didn't he go through over you? Well he figured possibly I had a gun, I had my hand in my pocket and stuck my finger out. He couldn't tell whether I had a gun or not—good bluff.

And he backed up? Yes.

I believe you said then he went in the other room and locked the door? That is right.

That was the door to his apartment? I don't know which one it was, it was south.

That is the one the shooting did not occur in? That is right.

Did you see him anymore? No, sir.

When he went in the other apartment, he made it in the other apartment, did you have an opportunity to look in the apartment where the shooting occurred? For a second I kept my eye on that door. I didn't know whether he was coming back out there or not, I didn't know what he was coming out with. I had given up, I knew they had the advantage of me but he didn't come out and I turned around and as soon as I heard him going back towards the back of the house I turned around and when I turned around I observed Mr. Stembridge holding a negro woman's hand up. Which one it was I don't know. And she had a gun in her hand. They were weaving from room to the door, the middle door leading into the back, and about that time I hollered out; I said "Look out Marion,

look out. He is coming around the other way". I saw them stop and about that time they started shooting. I didn't know who was doing the shooting, whether Mr. [fol. 181] Stembbridge was doing the shooting or whether the negro was doing the shooting or who was getting shot. I was tied up by the door, I couldn't leave there because there were two other negroes supposed to have been there, her husband and her other son, which I knew were very bad, mean negroes.

Was the shooting fast? Yes, it was so fast I couldn't keep up with them, in fact, it excited me, I didn't know how many shots it was, couldn't tell you to save my life. Immediately I saw one of these women go down as if she had stepped off into the back, as if she had stepped on an uneven step, from one room to another. Marion came bouncing out then and before he got there he hollered to me at the front door, said, "Go, on Sam, go ahead." I didn't move. He got almost to the door and said, "Go ahead, Sam, there is going to be more shooting." Well I left them then in a big hurry.

You ran back to your car? Yes, we came on down as quick as we could possibly get there.

What did you do then? I put Mr. Stembbridge out at his place of business, came down and stopped at Culver and Kidd's, rushed over to the corner, I saw Parker, the policeman, said, "Where is Ellis?" He said, "He is not here but Beckum is here." I said, "Let me see him fight quick."

Was Beckum the one in charge? Beckum was in charge. I observed at the time that the phone was ringing and one of the policemen was answering and he put the receiver down and ran down to the café and here come Beckum. I told Parker to start with, "I want to see him Parker, and I want to talk to him and tell him about the shooting [fol. 182] we were in out at Oconee Heights." He said, "All right, here comes Beckum." I hollered at Beckum three times, I know. I know of three times I hollered at him. It was before he got to the phone. When he got away from it, when he hung up the receiver, he said, "All right, Boys, come on, there has been a shooting at Oconee Heights, let's go", and off they went.

Cross-examination.

Mr. Terry, you work for Mr. Stembridge, do you not? Yes.

Did you make any loans yourself? No, sir.

What were your duties with him? I am an appraiser and auctioneer and collector.

Are you familiar with his books and records? Not all of the-, no sir, not by any means.

Have you got the ledger sheet here on these negroes' account to-day? No, sir.

Can you get it? Well, I couldn't get it. Mr. Stembridge could get it possibly.

On the bond hearing Mr. Stembridge produced that voluntarily in court? I don't know whether he produced it as evidence or not.

He laid it out there for me to look at? Yes, we looked at it.

How much was this automobile sold to these negroes for? I don't have the least idea. Mr. Stembridge looked after the automobile part of the business.

[fol. 183] Did you testify here on the bond hearing? Yes, I did.

Did you tell us then what it sold for? I don't remember that.

Don't remember what you told us? I might have told you when I saw the sheet.

You saw it, didn't you? Yes.

What was it? I don't remember it. I told you that I didn't look after that part of it, it is not familiar in my mind. Mr. Stembridge looked after it.

What was the amount of the note you took from them? I don't remember that. Mr. Stembridge, I think took it, I am not sure. If I took it I took it on his word.

Mr. Ennis: I think the highest and best evidence would be the ledger sheet itself. He can put a subpoena duces tecum, and I object to it.

Mr. Baldwin: Your honor knows that I can't make them produce evidence against themselves by a subpoena duces tecum, but I can cross-examine him on what he knows.

By the Court: Yes, go ahead.

That paper is available if you want to get it? I guess

so, yes, it was here before. I don't see any reason why it should not be here now.

Will you get it? I can't get it, Mr. Stembridge will have to get it, he keeps those papers.

Did you ever make any collection on this automobile? No, sir, only in the office, none outside.

Did you make any in the office? I think I did, yes.

Did you put any credit on that note? Didn't have to put it on the note. We give it to them on the ledger sheet. When the note is paid up we return it to them, marked paid.

[fol. 184] You mean to say you don't credit a note on the back when you make a collection? It is not necessary, they know how much, they have got it.

What have they got? They have got the receipt written by whoever receives the money.

Don't you know Mr. Terry, you are supposed to enter a credit on a note every time you get a payment on that note? I do know when you get a receipt that is prima facie evidence of it being on the back of the note.

Don't you know that any bank in the world when you make a payment on a note that it is supposed to be credited on the note—is that the way they do you if you make a note? Yes, sometimes.

You don't see those credits on the note? It don't need to have them for me, I pay them off, I don't ask questions.

Have you got that note by any chance that these negroes signed? I guess Mr. Stembridge has got it.

Mr. Evans: Mr. Baldwin knows very well that he has no right by subpoena to have us bring in Mr. Stembridge's documentary evidence.

By the Court: Yes, the state cannot force the defendant to produce evidence.

Mr. Baldwin: Can't force them but they can hand it to me if they want to.

By the Court: That would be a matter of agreement.

Mr. Evans: There is the note (Handing it to Solicitor).

Here is the note, this note is for \$1027 (showing to witness)? That is right. I witnessed it as notary public.

You took the note then, how come you didn't know what [fol. 185] was in it? Wait a minute, I didn't take the

note, I witnessed it as notary public. There is a big difference in a notary witnessing a paper and accepting it through process of dealing with them.

Is there any credit on this note? I don't know whether there is or not.

Mr. Ennis: The note speaks for itself.

By the Court: I sustain the objection.

Look at it? I have already explained to you about the receipt. The receipt is prima facie evidence.

Mr. Evans: I object to this line of questioning. The note is here and speaks for itself.

By the Court: This witness is on cross-examination, so you may proceed.

Mr. Evans: You overrule that objection.

By the Court: Yes.

Mr. Evans: And allow him to go into the contents of the note.

By the Court: The ruling did not go that far.

Mr. Evans: My objection is that the note is the highest and best evidence.

By the Court: I rule that it is.

You told the jury a minute ago that you accepted some payments on that note? Possible I did, I will acknowledge that.

Did you put any credit on it yourself? Is it on there?

How many times had you been out to this negro house before this shooting occurred? I imagine about three times, I won't be sure.

Mr. Terry, I will ask you whether or not you carried a pistol out there when you went? No, sir, I didn't.

[fol. 186] On one previous occasion did you not get out and go to the door and then go back and get your pistol and put it in your pocket? No, I didn't, I certainly didn't. I didn't carry a gun with me at all.

Do you carry a gun at all? No, sir.

Never? No, sir—in my life I may have carried one.

I am talking about on your collection trips? No, sir.

I believe you told the jury, Mr. Terry, that you had your finger in your pocket? That is right.

Sticking out? That is right.

Like a pistol? That is right.

I will ask you whether or not you didn't tell the court on this bond hearing that you had a paper bradding machine in your pocket, sticking out like a pistol? I did, yes.

Which one did you have? Well I had my hand and that too.

Did you have one imitation pistol or two? I didn't have either one, I had the clip, a small stapling machine, because I had been out on an inquest and Mr. Stembridge caught me as I was going back to the office.

Did you use that as a pistol or your finger? I don't know which one I used; I had my hand on it.

You made a very nice statement to the jury, it was a good bluff to use your finger—you knew then? That is right.

But you don't know now—when you got to that house did you know Mary Jane Harrison? No, sir, I couldn't recognize her never have, my dealings with her and the whole family, I could not pick them out of that crowd right there to save my life.

[fol. 187] Did you know which one was the mother of the boy Johnnie? No, sir.

Were both of the women there when you got there or did one come a few minutes later? No, sir, they were both there.

I believe you say that Mr. Stembridge directed you to write that order for that negro to sign on that automobile? That is right, this one right here.

That order don't say how much he was to pay a week or nothing? No, sir, he discussed that with him.

What did he say? He told him, Your amount is \$50. I will put down here in my handwriting whatever you say you can pay and how little, just so we can get it started and when you get it started you will pay out before you know it."

Don't say when it was to be paid or anything, just blank was to pay Mr. Stembridge \$50? Yes. Mr. Stembridge was to do that.

Isn't directed to anybody? No, sir.

On this bond hearing, Mr. Terry, I will ask you whether or not you testified Mr. Stembridge grabbed him by the

neck and said, "You will sign it"? No, sir, I didn't say that.

You didn't say that? No, I didn't.

Do you know your lawyer opened his case by saying that Mr. Stembridge said, "You will sign it"? I don't think he said that. I don't remember that.

Well, you are not sure about that, are you? No, sir, I don't remember.

You don't say that he didn't grab him by the back of the neck and say, "You will sign it"? I know he didn't [fol. 188] grab him by the back of the neck.

What did he grab him by? He didn't grab him anywhere; the negro grabbed him.

You mean to say Mr. Stembridge didn't grab that negro too? He may have—he would have been a fool if he had.

Why didn't you say that, how come you holding that back? Give me a little time and I will tell; I am not holding anything back.

You say that this woman said "look there", what did she say, the older woman? "Look at that white man got his hands on that boy" and when she turned and went into the room then she started cursing him called him a son of a bitch, said "You white son of a bitch, I will get my gun and shoot your damn heart."

Don't you know that all these folks that owe you all money know that you and Mr. Stembridge tote pistols? No, sir.

Mr. Ennis: I object to that question. I object to my brother asking this witness about what other people may know about the habits and custom of this defendant.

(Objection apparently sustained.)

Do you know these negroes knew you were high corner? That is right.

Your Pa was sheriff of this county for a long time? That is right.

They know Mr. Stembridge is a prominent man? That is right.

There were you and Mr. Stembridge there with an 18 year old boy and two women—don't you know those negroes would not have jumped you all or cursed you? They did, there is the record before you.

[fol. 189] Whose record? Theirs—you have it, you know it.

Have you got a record of that? I say that and say what you know.

They called you a white son of a bitch? Called Mr. Stenbridge that.

She said, "Take your hands off my boy, you white son of a bitch, I will get a pistol and shoot your brains out"?

Said, "Take your hands off that boy, you white son of a bitch."

You said "My boy" on direct examination? She might have said "my boy", I don't deny that.

Then she went in the house? That is right.

She was the first one went in there? Whichever one it was in the door next to me.

The one that was back on the porch towards Milledgeville was the one that said that? Yes.

Was that the yellow one or the black one? They all look black to me.

Mary Jane looked black? She sure did; I was not paying that much attention.

She is the one that went in the house first? The one next to me.

The one that said, "Take your hands off my boy"? I think she said "my boy"; I know she said "that boy".

Then Mr. Stenbridge went in there behind her? After she made the statement that "I will shoot your heart out, you son of a bitch."

Didn't say anything about "white"? She may have said that. Anyway, she said, "I am going to shoot your heart out, you son of a bitch."

[fol. 190] You said she said "white son of a bitch"? Well, I will say it now.

You finished saying, "I will shoot your heart out, you son of a bitch"; you left out "white"—which is right? Well, put the "white" in there.

Of course, she went back and got the pistol? I don't know whether she did or not, I couldn't see in there, I was not in a position to see.

You don't know whether she got it or not? No, sir, I don't know whether she did or not.

She was the first one that went in after it? That is what she said she was after.

Then you said Stenbridge went back in there after her? He hesitated for just a second. It looked like he was trying to make up his mind whether he wanted to go in and come out in a hurry.

Who went in there next? Mr. Stenbridge went in there.

Who went in next? This other woman on the lower side.

Who went in next? Didn't anybody go in there.

You mean to say you never did get off the porch? No, I didn't.

How soon after this first woman went in there was it before the shooting was over? It was a matter of seconds, everything happened.

How many shots did you hear? To tell the truth I don't know how many shots I heard; couldn't say whether it was two or eight, nine or ten.

What kind of pistol you got? My personal pistol?

Yes? 38 S. & W. that was my father's.

Revolver? Revolver.

[fol. 191] You have an office pistol too? No, sir, don't need it.

You have never pulled a pistol on a negro in that office? No, I haven't. It has never been necessary that I pull one on him, never anything come up at all.

What room did the shooting take place in, Mr. Terry? I don't know which room it actually took place in; all the scuffling going on was in the door it looked like between the front room and the next one, if there is a next one. I don't know how many rooms in there. The only thing I saw was peeping in the first one there. I didn't go in there to find out.

Where did Mr. Stenbridge carry his pistol? I never did see him with one. I never saw Mr. Stenbridge with a gun on him in my life and I worked right there with him.

He had it on that day? Evidently he did.

You didn't see it? No, sir.

Never did see it at all? No, sir, not until got back to the office and asked him, questioned him about it, asked him what he was shooting. I said, "It sounded like a popgun to me." He said, "Here it is right here."

You had never seen it before? No, sir.

How long have you been working for Stembridge? I imagine about a year and a half.

You say all the shooting took place in that second room? I don't know where it took place.

You were looking at it? I was looking in that direction, it was dark in there, kind of dark.

You couldn't see when you got into the door? Could with a little light, yes.

[fol. 192] Wasn't much light? Yes.

You couldn't see well enough to even tell which room the shooting was going on in? I could tell it was in the door.

You couldn't see his pistol, just heard it popping? That is right.

How did you see the negro woman's pistol? I saw her when I turned around to tell him to "look out, he is coming around the other way" and I saw her arm after trying to get it down. I could tell that because they were in the door where the light shone through.

Did he get any wounds on him, did he get shot anywhere? No, sir.

What kind of pistol did this negro woman have? I don't know.

What color was it? It was dark.

Did it look like a revolver or an automatic? Well it looked like an automatic to me. I couldn't tell.

You couldn't even see what room they were in but you could tell that it was a dark pistol and looked like an automatic that the woman had? That is right.

Did he shoot out? I don't know, sir, whether he did or not. I just told you I couldn't tell whether it was two shots or ten shots or what.

You don't know whether it was two shots or ten shots? I asked him, I said, "How many times did you shoot?"

He said, "seven times." I said, "My goodness alive, let me see that thing. How many does it hold?" He said, "Eight." I said, "Did you hit two of them?" He said, "Yes." I said, "Why in the world were you trying—what were you shooting for?"

[fol. 193] Mr. Baldwin: Wait a minute, you need not tell. He is going to talk for himself.

You don't know whether he shot all the bullets out of that pistol or not, do you? He said he didn't.

I will ask you whether or not when he put four bullets in each of those negroes, whether they dropped their pistol or not? Now this woman went down in the back, I heard something hit the floor.

It must have been the pistol? I suppose that is what it was, I don't know.

You and Mr. Stembridge are both experienced and highly intelligent men? Well, I hope we are, I hope we are considered that.

Mr. Ennis: As to what Mr. Stembridge is is a question not to be answered by this witness and asked by Mr. Baldwin.

By the Court: I sustain the objection.

You are highly intelligent, ain't you, Sam? I hope so.

And wouldn't it have been a fine thing for you all if you had just picked up that pistol lying on the floor and brought it with you? I don't think so?

You didn't get shot? No, sir.

There was not anybody putting their hands on you? Not a bit.

Nobody hurt Mr. Stembridge in any way? No, sir, not that I know of—some scratches he said he got.

These women were well shot up, were they not? I don't know that, I didn't go that far into it.

You know one of them died right after that? Yes, they told me she did. That is what we are up here for.

What did you do after the shooting was over? Came right on to town as fast as we could.

[fol. 194] You ran from there, didn't you? You are right we did.

DEFENDANT'S STATEMENT

(By the court. Mr. Stembridge, the grand jury of Baldwin County has returned into court a bill of indictment charging you with the murder of Emma Johnekin on March 7, 1949, in this county. You are now on trial under that

indictment and under the laws of this state you have a right to make to the court and jury just such statement in your own behalf as you deem proper. You may now proceed with your statement.)

Sometime ago George Harrison started doing business with my grocery store down on Wayne Street. The first thing I knew he was buying \$15 or \$20 a week from us and paying up his account all right. They owned two automobiles in the family. George owned one and Richard Lee owned one. They were old automobiles and they were always in the shop and the first thing I knew I was lending money \$10 to \$50 at a time and at times they owed me as much as \$250, that is, just repair bills. In the end George paid his account out all right and his account was satisfactory with me. But the first of May last year the finance company that had financed Richard Lee's car took it away from him, Richard Lee's and the family car as I understand it. George owned a car and Richard Lee and Mary Jane Harrison and Johny Cooper owned another automobile. When they took away the car owned by Johny and Mary Jane and Richard Lee the family began—who were still in debt to me and who had up to that time handled the account fairly satisfactorily—began working on me to finance, to buy them another automobile, and I was not in the automobile business. I had no automobile to sell [fol 195] and no automobile at all except the one I used and no interest in any automobile business. They kept raising the amount that they promised to pay until about, well it was the 18th of June, I believe about the middle of June anyway, they found a 1941 Chevrolet down at Mr. Clarence Hodges for sale and I consented to loan them \$850 to buy this automobile, in fact, I bought the automobile from Mr. Hodges myself. The way the transaction happened they gave me a note for the amount of this transaction plus the balance already owed to me by them, by the three who were on this note. The note is in evidence, was signed by Richard Lee Cooper, was signed by Mary Jane Harrison and signed by Johny Cooper. And when they brought Johny Cooper in there to sign they told us he was more than 21 years of age. We did not do business with minors. We know of course that a

married woman cannot endorse for her son except for meat and bread, something like that. After I had bought this car for them, including all of their back transactions in this one note, Richard Lee was to pay me \$17.50 a week, Mary Jane had some money coming in from some source, I don't know, she was to pay \$10 on the 4th day of every month, Johnny Cooper was out of a job at the time, I believe, and he was to pay \$5 a month. They kept up—along about the first of August this car was run into from the back by a lumber truck by someone who we later found was able to pay the damage. The state patrol came along right after the wreck, investigated it, found the other man was to blame; arrested him, prepared to come here to the trial of the case. We went into it and got from the state patrol a map of the whole transaction and a statement of what they would come here to swear to. [fol. 196] Before this occurred, in an attempt to collect the damage, which amounted to about \$350 out of the party who had run into Richard Lee Cooper, who was driving the car at the time, I said that when we financed this car we added only 6% interest, that at their express request they would pay \$17.50 a week, and they didn't want the car insured and I didn't insure the automobile. The automobile was not insured. It was not insured by their express request because that would have cost \$150 more and I required them to about pay it out in a year. They couldn't have gotten up enough money a month to pay out the insurance transaction. They went on and made payments on this automobile for a month or six weeks after it was hit. They made their last payment on the 13th day of September, 1948. In the meantime I was trying to get them to sign a claim against this man. I told them we had already engaged an attorney, all we had to do, we had investigated and found that the man was worth the money, all we had to do was to sue them and get the money out of them for the damage to this automobile. At first they were quite agreeable but after a while they seemed to get the idea maybe they would have to pay it anyway, "get me another car" or something like that. As I say they made their last payment on the 13th day of September. George Harrison was still doing business with us. I think we

continued to do business with George Harrison from now on so far as I know. George Harrison was still doing business with us. We were still advancing some other members of his family and selling them groceries and stuff like that on credit. Every time I would see George Harrison, or every time or two, he was in twice a week, [fol. 197] every two or three weeks or something like that, after I found they were not paying on the account I talked with him about it and he would tell me, "Now, Mr. Stembridge, those are young boys and they are hot headed and they don't know. You just leave it to me. I am going to get them in line. They owe you and they ought to pay you and I know it and they know it but they are not my boys but I will get them, you leave that to me, I will get them in." I sent George Harrison out along about the first of November to bring in Richard Lee Cooper. He hadn't been in since September. Mr. Terry had already gone out two or three times to talk to him at the house about it and they had given him evasive answers and made numerous promises about coming up on such and such a date and hadn't done so. George Harrison went and got Richard Lee Cooper off the street and brought him in and I talked with him about it and Richard Lee Cooper's attitude was challenging and bordering on the insolent. It was not something that I had to take up and I didn't take it up at the time. I didn't do anything about it. A few days later I sent for Richard Lee Cooper and told him he would have to return that automobile. He had been driving it all the time, from August until, well say, November 15th, Richard Lee Cooper. I sent him word to bring in the car and when he came in I told him he would have to leave it with me. We would put it in the garage and keep it locked up until he got money enough to catch up back payments. He could then take the car out, use it or have it fixed or do anything else he wanted to do about it. He turned the car over, he said, "All right, I will do that" and made new promises, "Yes," [fol. 198] "I am going to pay you" and specified certain amounts and certain dates. He took the car at my direction down to Mr. C. D. Hodges' garage on South Way Street, and I had called Mr. Hodges and he turned the

key over to Mr. Hodges. Mr. Hodges locked up the car completely, locked the key up in his desk inside his place of business, and then in two or three weeks I had reports that Richard Lee Cooper was driving this car again. One of the officers told me he saw him driving this car again. I investigated it, called up and checked on it and I found sure enough he was driving it again. I took the matter up with Mr. Hodges and Mr. Hodges said, "Yes, that car was moved away from here one night. They had gone and stolen it. The car was hit from the back and the body part was badly damaged but it would still run. They had stolen this car away from Hodges' garage and had it out running around town. The next time I sent Mr. Terry to bring the automobile to Mr. Hodges' garage. I kept it until after this transaction we are now talking about, foreclosed on it in the superior court, got an order from Judge Carpenter to sell it and sold it. Because it was so badly battered up I had to buy it myself. That is what became of the automobile. When I sent for this car was about, I will say, December 1st. Still there was a large amount of money, an important amount of money; the balance due on this car after all payments, was about \$859, and in the meantime I had lent Richard Lee Cooper money, which was to repair the automobile, and the balance now due is about \$859, I mean the balance due when I foreclosed on this automobile. But George was telling me all the time, he would come back once a week, whenever I [fol. 199] would see him, "Mr. Stembridge, some of these boys been out of job, let me handle them." Sometime in December Richard Lee Cooper called by my office and told me he was going north and don't fool around with him any more. Along in January I found he had not gone north and he was working, and found out where he was working. So I got a report after then they were working at the State Hospital.

I intended to go out, February 10th was pay day at the State Hospital, and talk with them about it but I got busy and didn't go out. March 7th, just before pay day, just before pay day, March 10th, at the State Hospital, in the afternoon of March 7th, I told Sam, Mr. Terry, "Come on, I want you to go with me on a little trip." He did

not know whether he was going on an appraisal trip to appraise an automobile or appraise a piece of property, he did not know where he was going. Because of the fact that Richard Lee Cooper, his attitude when I tried to get him to sign this claim against these people and the fact that by this time I was getting reports that I was dealing with a situation, I couldn't get anything too much specific about it, but I was dealing with these folks who were not just what I thought they were, I put my gun in my pocket. I don't carry a pistol. It is the first time I ever carried one on a collecting trip I feel certain; I don't remember ever having carried one before. This pistol I bought 30 odd years ago and it has laid in the right hand desk drawer since that time except occasionally when I take a trip for a week or two in an automobile I put it in the glove compartment. I had it with me that afternoon in my hip pocket. We went out as close to the house as we could get. The roads were muddy and couldn't get close [fol. 200] to the house. As Sam and I got up close to the porch we saw this woman, whom I had never seen before and who must have been more than 21 or 22 years old anyways she was, no girl. She was not quite as tall as Mary Jane but she was stout. I had never seen her before. This woman and Mary Jane were standing on their front porch and Richard Lee Cooper was leaning against the railing, with his hand above an upright post, the first upright post after you get on the porch, right near the door leading into the rooms on this side—by the way, the same family occupies both sides of the house. As we walked up on the porch, this woman disappeared into the first room, Emma Johnkin, I found out. Mary Jane Harrison went into the second room. I spoke to all of them as I got up on the porch. I began asking Johnny about his account; it had run for about six months, what was the matter? Well, he had not had a job. "Well, you had a job part of the time." "Yes; I haven't had a job much of the time." I said, "Don't you have a job now?" He said, "Yes, sir, I have a job now. I just got a job out at the State Hospital." I said, "When do you get paid off?" He said, "I get paid off the 10th"—Thursday or Friday, whatever it was. I said, "All right, how much

money you got coming at that time?" He told me. I said, "You owe me \$20", as he admitted yesterday, "On another account. You owe me \$5 a month for six months on this account. Suppose you give me an order to your employer to pay this \$50 to me and that will catch you up to date and pay the balance at the rate of \$5 a month like you had promised to pay it." "All right, Sir, I will do that." Mr. Terry had stopped at the steps about 10 or [fol. 201] 12 feet away, and I said, "Sam, write out an order, please" and I was talking with Johnny about where Richard Lee was working, what had been the trouble and I was telling him, "You don't have to pay it all, I know you can't. The object in a situation like this is to get it started and the first thing you know you have got the thing done and the account has disappeared." It was perfectly and completely friendly. Sam brought the card up and gave it to me. I am rather certain that Sam handed the card to Johnny and handed his fountain pen to Johnny and Johnny took it and started to sign it. About that time I heard some mumbling and grumbling back of me. It started about that time and all at once one of them said, "He is not going to sign that thing" and the other one said, who was directly back of me in the first door, Mary Jane said, "Johnny, don't you sign that thing" or words to that general effect. The one in the second room had evidently come out on the porch. Emma said, "He is not going to sign that thing." I said, "Well, he is going to sign it, he has already signed it" and Mary Jane said, "Well, he is not going to sign it" and about that time Johnny jumped or got down off that porch and slapped his arm around my neck. I began pushing him around, pushing him off of me and Emma who was standing in the door says, "You take your hands off that man, you son of a bitch", you white son of a bitch or son of a bitch. To tell you the truth it was so fast and so unexpected and Mary Jane was cursing too at the same time, said, "I will get my gun and shoot your heart out." And I pushed Johnny off me and turned around to face them. Say this is the door leading into the first room. I turned [fol. 202] around to face that door. She ran in there. The room is only nine by nine I found out, ran in there

and grabbed her hands under the pillow, turned around and started towards the door. I got back of this door jamb until she got in about a foot and a half, and it occurred to me that she was fooling with that pistol and she was not shooting it. I didn't want to kill her, I didn't have any business killing people. It then occurred to me, may be if I could knock her down it would settle the whole matter. I had the door jamb on her, I reached in over-handed and hit her on the right side of the head with the back end of that pistol. But I didn't hit her hard enough. She staggered, threw out her hand against the wall and began to close her eyes and the first thing you know that pistol dropped on the floor all at once. She took a deep breath and reached down to get that pistol and I shot at her. I think I hit her, I hit her somewhere. I shot at her shoulder. I had her right there, I could have shot her in the heart the first time, the second time killed her sure enough, standing right there in two feet of her. I didn't want to kill her even then. What I wanted to do was to get out of it and not get hurt. When I shot her this gun dropped on the floor and about that time Mary Jane came in through the front door and slammed against me and tried to get her hands around my neck and push me over against the bed inside the room. The room was full of furniture, the bed about five feet wide may be and some opening between the furniture. Mary Jane jammed me over against this bed, I looked up. She was trying to get her arms around my neck. I looked up, all at once she was hitting me with one hand and part of [fol. 203] the time trying to grab me around the neck. I looked up and Emma had recovered, was not hurt much evidently. She had the pistol in her hand, had got it up from the floor some way. I grabbed her arm and held her hand up like that and I began to black out and I began to shoot. I shot three or four or five times then, I don't know how many times I shot. I jerked my head down under and got my head out and about that time they began to release their hold on me and Mary Jane says, "I am shot" and started to run through the back door. It happened right there in the front room about a foot inside the front room from the door, I would say. Mary Jane

ran towards the back and I didn't see her any more. Just as Mary Jane turned me loose I saw Johnny Cooper running through this door of the front room at the back end, grab up this pistol off the floor and got it up about a foot high before I saw it. I squared off to shoot him, he jumped back of this door jamb into the second room. I found out later it is a closet but just like I told Mr. Jones in my statement that night I said it was a door jamb. It was a place back there two or three feet he could jump back there. He jumped back there with that pistol, he never got it more than a foot high, when he saw I was fixing to shoot he dived back of that door jamb. I didn't see him any more but I knew he had that pistol. All at once Emma recovered and lunged at me again and I shot her again and she sagged down to the floor. I looked around and there was Sam standing in the door facing us. I said, "Come on, Sam, let's go. There is apt to be some more shooting here, that boy has got a gun." I went by Sam and we went on out to the porch. He said we ran. [fol. 204] We moved hurriedly but I kept looking back. I didn't know I had shot the woman three or four times, that is the truth. I have taken some time to tell you exactly what happened but the whole thing happened in less than 30 seconds, everything was over and we were out in the car. We came back to town. I asked Sam to go and notify the police what had happened. I didn't go out there to shoot those people. As I said before, we are not in the business of shooting people. We are in the business of serving them, what we try to do. We expect to get paid for it, get a living out of it. I didn't want to shoot them, I had nothing against them to tell you the truth and to tell you the honest truth I don't now. I didn't want them to kill me and that is the reason I shot them and that is the only reason I shot them. I them in defense of my life.

Defendant rests.

Testimony in Rebuttal for the State.

C. S. BALDWIN, Jr., sworn for the State.

Direct examination.

(By Mr. Baldwin) I wish to state that there was no effort to conceal this ballistic report from the grand jury, that they had the information that all these bullets and these hulls were fired out of Stembridge's pistol. I told them that myself. I also wish to state that on the bond hearing I was cross-examining Mr. Terry and asked him to produce his records in this case. Finally Mr. Stembridge jumped up and pulled out the ledger sheet, threw it down, and said "here it is." Mr. Evans, his lawyer was there, and he did not agree to that. The Judge ruled [fol. 205] if he produced it voluntarily I could look at it and I looked at it and wanted to make a copy of all the transactions but they would not allow me to take it out of the court room. Mr. Evans objected to me taking it out.

Mr. Evans: If you feel like we are unfair, while we have rested we have still got time to do it. I am going to ask for a little recess and let Mr. Stembridge bring the ledger sheet up and put it in evidence.

Mr. Baldwin: All right, do that. That will relieve me from testifying.

Mr. Evans: He has to go to the office.

Mr. Baldwin: I am willing.

(It is agreed that Mr. Baldwin may state what he remembers of the ledger sheet.)

(Witness continues) The item of June 18th when he said he sold the automobile, up to that date he had the family owing him—all of the family was on one ledger sheet of those negroes, the Cooper negroes, he had a balance that day of \$71.66 up to that date on the automobile and then he had an entry of \$850 and right opposite that he had a balance they owed him was \$1093.66 or \$1098, I took it to be 93, but it might have been 98.

(By Mr. Evans) Do you need the ledger papers? I don't need it unless you do.

Mr. Baldwin: We want to put in evidence this note that they voluntarily produced.

Mr. Ennis: No objection.

By the Court: The note is in evidence.

[fol. 206] LOUVENIA COOPER, sworn for the state.

Direct examination.

Your name is Louvenia Cooper? Yes, sir.

Mr. Ennis: At this time I wish to object to the competency of this witness and ask the court to make the proper inquiry.

Examination by the Court.

What is your name? Louvenia Cooper.

Where do you live—have you been to school? Yes, sir.

Where did you go to school—what grade are you in—how old are you? 11 years old.

Were you sworn as a witness in this case? Yes, sir.

What did you do—do you know for what purpose you held up your right hand? To tell the truth.

Do you know what would happen to you if you failed to tell the truth? Devil get me.

Do you know you would be punished by law if you did not tell the truth? Yes, sir.

What is your understanding of the oath you took yesterday when you raised your right hand? That I was to tell the truth.

Do you realize you will be punished if you do not tell the truth? Yes, sir.

Mr. Baldwin: That is sufficient.

Mr. Evans: I would like to ask one or two questions as to her competency.

Examination by defendant's counsel, Mr. Evans.

Louvenia, when did you swear as a witness? Yesterday.

What did you do when you swore? I raised my right hand.

[fol. 207] Who else was doing that—was anybody else there raising their right hands? Yes, sir.

Was your mother raising her right hand? Yes, sir.

Do you know what an oath is? No, sir.

Do you know what swearing is? Yes, sir.

How long have you known what swearing is—have you been in court before? No, sir.

Have you ever been up here when other folks swore before? No, sir.

Did you ever swear before? No, sir.

How do you know what swearing was—who told you—Mr. Baldwin tell you? He didn't tell me.

Did your mother tell you? Yes, sir.

When did she tell you—Thursday evening? It has not been long ago.

Told you what swearing was? Yes, sir.

Who all was there? Mr. Lingold and Mr. Shepard Baldwin and the G. I. and Mr. Sergeant Ellis.

Was the other little girl there too? Yes, Sir.

Did they tell her what swearing meant? Yes, Sir.

Did they tell you if you swore and told a story that the bad man would get you? Yes, sir.

Or did you already know that? I already knew it.

You already knew that the bad man would get you without them telling you? Yes, I knew it.

Did you know up until that time that if you told a story up here in the courthouse that they would make a charge against you in court? No, sir.

What could they do to you if you did tell a story up here besides have the bad man get you? They would send me to jail.

[fol. 208] Who was it that told you that? Mama.

Mr. Lingold told you? No, sir.

He told you when your mama told you? No, sir, they had left.

Do you think that somebody shot your mama? Yes, sir.

You think that somebody shot her? Yes, sir.

If somebody shot your mama do you think that you would have a right to come up here in court? Yes, sir.

And do you think you would have a right after you got here in court to tell whatever it would take to convict the person that you thought shot your mama? Sir?

Do you think you would have a right if you told some-

-- thing that was not exactly true to help convict the person that shot your mama? No, sir.

You think you would have to tell the strict truth? Yes, sir.

Have to tell exactly what you saw? Yes, sir.

Mr. Evans: I think that this witness shows as much as we care to show on the proposition of qualification.

By the Court: I rule the witness is competent and the questions of credibility of course is for the jury.

Direct examination.

Were you at your home when Emma and Mary Jane got shot? Yes, sir.

Who all were there at the time when Mr. Terry and Mr. Stembridge first came up? Johnny and Emma and me and Martha and we got a little baby and Josephine, Johnny's wife, and Will, he was up under the house.

Will is your little brother? Yes, sir.

Was Mary Jane there when they first came? No, sir, she had gone to the store.

[fol. 209] When Mr. Sam Terry and Mr. Stembridge walked up on the porch where was Johnny? He was already on the porch.

What was Johnny doing? He was not doing nothing but sitting down.

Where was he sitting? He was sitting on the banister of the porch.

What did these men do when they came up there at first? They said nothing but "Where is Richard?" And Johnny said, "Richard is working" and Johnny said, "Ain't that where he is, Emma?" and she said, "Yes, that is where he is working."

What did they say next? He said, "What are you going to do about this car?" Johnny said, "Nothing."

What was the next thing done or said? Then Mr. Stembridge said "Nothing" and Mr. Stembridge told Mr. Sam to write out an order. Mr. Sam went over side of the wall and wrote something or another and read it and handed it to Mr. Stembridge, Mr. Stembridge read it and handed it to Johnny.

What did Johnny do with it? He took the note and

Mama was coming out of the next door and Johnny asked, "Mama, must I sign this paper?" and Mr. Stembridge said, "Mama, hell."

Mr. Stembridge said "Mama, hell"? Yes, sir.

What was the next thing said and done? He said, "You going to sign this paper?"

Who said that? Mr. Stembridge.

What did Mr. Stembridge do then? Then he went around there and got Johnny in his collar.

Did Johnny catch him? No, sir.

Did Mr. Stembridge have any kind of weapon with him? [fol. 210] Yes, he had some brass knucks and Emma said, "Look at that man got brass knucks" and when she said that he turned Johnny loose and she ran in the house and he ran in the house after her.

Did he catch her? Yes, he caught her.

Who went in that house first? Emma went in the house and he went behind her.

How close was he behind her? He was real close.

Were they running? Both were running.

Who was after her? Mr. Stembridge.

Who went in the house next after Mr. Stembridge? Mama.

I will ask you did Emma or Mary Jane curse? No, sir, not either one cursed.

Did anyone say anything about a son of a bitch? No, sir.

You say Mary Jane went in behind them? She went in behind Mr. Stembridge.

Did anybody else go in behind Mary Jane? Mr. Sam come in behind Mama.

Mr. Sam who? Sam Terry.

Did anybody else go in behind Mr. Sam? No, sir.

Where was Johnny all this time? When Mr. Sam backed off him he went in the door, he went around in his side.

He ran on his side? Yes, sir.

Where did you go? When Mr. Sam went in I went on in behind him in there.

Did anybody else go in there with you behind him? Me and Martha.

Who is Martha? My little sister.

[fol. 211] Did any shooting get started in there? Yes,

when he went in he shot Mama right back there in the back.

Who was it that shot your Mama? Mr. Sam Terry.

Did you see him when he shot her? Yes, sir.

How close were you to him? I was right behind him.

When he shot your mama what room was she in? She was in the first room.

Was that the first shot? Yes, sir.

What did your Mama do? She walked on through.

Did he shoot her any more? Yes. When she jumped out where Mr. Stembridge was he shot her again.

Did she get right behind Emma and Mr. Stembridge when she went through? No, sir, they were tied up and she went on around them.

Did she grab hold to any of them? No, sir.

Where did Mary Jane go? She went on in her room.

Which one was her room? The third room.

What did she do in there? She went in there and he shot again and she got in the kitchen and laid on the table. As she went to straighten up and said, "Come on, Pete", as she went to say that he shot again.

In the meantime was Mr. Stembridge doing any shooting? Emma had Mr. Stembridge's arm, trying to hold it to keep him from getting his pistol. When he got his pistol he shot her in the arm and she come up and then shot her twice in the shoulder and shot her in the stomach.

Did he shoot her in the shoulder and stomach while she was sitting on the trunk.

Mr. Ennis: I object to his leading the witness.

By the Court: I sustain the objection.

[fol. 212] Come down here, Louvenia—like this here is the trunk and I was Emma sitting on it? She just went to sit on it like this and he was standing right over her and he just shot her in her arm and in the shoulder.

Where else did he shoot her? Shot her in the stomach.

Shot her in the stomach while she was on that trunk?

Yes.

Did your Mama or Emma have a pistol? No, sir.

After they shot all they wanted to what did Mr. Stembridge and Mr. Sam do? Both ran out of the house.

Did they say anything when they left? No, Sir, they

both went running. When I came out of the door I saw them go around the house running fanning their coats.

Are you telling the truth? Yes, sir.

Cross-examination.

Had you gone to school that day? Yes, sir.

What time did you get back from School? 3:30.

Who was there at the house when you came back? Mama and Pete and Louise, my sister, my brother's wife's sister was at the house and Josephine and the baby and Johnny.

Were they all there when you got back at 3:30? From School?

Yes? Yes, all of them were there.

Was your mother working then? Yes.

She got off from work and had come back at 3:30? Yes.

What did you study in school that day? I read my lesson and had arithmetic on the board and read English and health and everything else.

Do you remember some of the arithmetic problems you had that day? No, sir.

[fol. 213]. Do you remember whether you were studying adding or subtracting or what? Studying both of them and multiplying too.

Was everybody in your class room at school that day? No, sir, wasn't everybody there.

Who was absent from the class that day? I don't know.

How many were there that day? I don't know.

Are you sure they were not all there? Yes.

When you came there at 3:30 what did you do that afternoon? I didn't do nothing, just come in the house and Ma always helped me with my lessons.

What lessons were you studying? We were studying all of them.

How long did you study your lessons? About 30 minutes.

Then what did you do? All of us come out on the porch and sat down.

Mama was there too? Yes.

Was she there when you were studying your lessons? No, sir, I had got through with my books.

Then what did she do? Didn't do nothing but sat on the porch.

Then what did she do? Nothing.

Was she there when Mr. Terry and them came up? No, sir, before they came she had gone to the store.

Did she tell you she was going to the store? Yes, Sir.

She told you she was going to the store? Yes and I told her to bring us some icecream back and she brought it.

Was it good icecream? All of it good I guess.

Was it an icecream cone? No, sir.

[fol. 214] What was it? Chocolate fudge icecream.

Is that the kind that melts fast if you don't eat it? Yes, sir, it will melt all of it will melt.

Sometimes, it melts fast, was it fast melting icecream? I don't know what kind it was.

Would it melt like that you put in a cone? It was fudge, it was hard.

Your mother brought that home to you from the store, are you sure of that? Yes, sir.

Who else did she bring icecream to? Martha, she brought her one.

When she brought the icecream to you was it melting? No, we met her on the porch. She was going next door to try on a dress. She gave me the paper sack and told me to give Martha one of them.

You met her up the road and got the icecream and she was going to try on a dress next door? Yes, sir.

Did she go in and try on the dress? Yes, sir.

What kind of dress was it? It just was a dress.

What color was it? It was flowers, green and white.

Who was making the dress for her? Miss Sarah May Youngblood.

She lives next door to you? Yes, sir.

When did your mother come out from trying on the dress? She didn't stay in there more than about a second.

She didn't stay in there 15 or 20 minutes? No, sir.

How long did your mother tell you to say she stayed in there? She ain't told me nothing.

She didn't actually stay in there but a second or two—when she came on the porch where were you? I was on the porch too.

[fol. 215] Where on the porch—were you at the end towards the Sanitarium or at the end towards Milledgeville? I was on the side just like going to town.

You were on the side towards Milledgeville—who was on that side with you? Nobody but me and Martha sitting on a bench together or on the swing.

Is there a swing on the porch? No, sir, it is a long rocking chair.

Where was that long rocking chair on the porch? It was over here towards Milledgeville.

Was it up against the wall of the house or towards the rail? It was up towards the house, opposite the window.

You were sitting there—that would have been right at the head of the steps? No, sir.

Where would it have been? On the porch.

You were sitting out there with your little sister at the door at that end of the porch? We were not on the end of the porch.

I can't get straight where that was that you were sitting—you said it was on this end of the porch towards Milledgeville? Yes, sir.

Was that where you were? Yes, sir.

Were you sitting down or standing up? I was sitting on the arm of the chair.

You were sitting on the arm of the chair at this end towards Milledgeville? No, sir, I was sitting on the other end of the bench.

Which end were you on of the porch, were you on the one down towards the Sanitarium or the one towards Milledgeville? On the one towards Milledgeville. We were not right at the steps. The bench is not right at the [fol. 216] end of the porch.

How far from the steps were you? About from here down to that chair almost.

From about here to that chair right there? Yes, sir.

From about where you are to where that gentleman is sitting? No, to that chair right yonder.

Were you about this far from the steps, as between you and me? No, sir.

About this far? Yes, sir, about that far.

You would say that is about eight feet from the steps, this is about eight feet, isn't it? I don't know.

You were about eight feet from this end of the porch—wouldn't that have been making you sitting right in front of the door leading into you all's side? Yes, sir.

Were you sitting in the chair right in front of the door? No, sir, I was sitting on the arm of the chair.

And the chair was right in front of the door? That is right.

Where was this other sister of yours? She was sitting in the bench.

Is that the same as the chair? Yes, on the rocking chair.

How much stuff was that on the porch, how many chairs were out there? It is a long chair made like a rocking chair and two chairs that go with it.

You say one of the chairs was in front of the door leading into your house? Yes, sir.

Were there some more benches and stuff between you all and the steps leading up to the porch? What did you say? [fol. 217] Was there anything between that door and the steps leading down off the porch? No, sir, big five gallon can of kerosene sitting down there.

How did that happen to be out there? Every Saturday we buy kerosene—we got it to carry kerosene.

Was that on Saturday? When it happened?

Yes? It was on Monday.

But you had the can out there where you could get some more Kerosene? Yes.

How did you happen to notice that the can was there? We set it there all the time.

Did it set there all the time? Yes, sir.

Where was Emma when you were sitting in the chair? She was on the other side of Mr. Stenbridge and Johnny.

Where was your mother? I reckon she had come up and gone to Mr. Youngblood's.

You ought to know—didn't you get the icecream from her just before she went in the house? Yes, sir.

When you went back there was Mr. Stenbridge and Mr. Terry still there? Yes, sir, when I got there, I was

to meet Mama. They were not there when I left. Mama had gone in the house.

They were not there when you left? No, sir.

And you went to get your icecream? Yes, sir.

Where did you see her? I saw her coming along.

How far away from your house was that? Three houses sitting there.

You went there, did she walk along? Yes, she stopped and gave me a package to bring to the house and gave me that little package there, told me that was my icecream.

You went with her about two houses and she went in [fol. 218] the Youngblood house next to you? No, sir, it was not two more houses, it was one more house.

Went one more house and then went in the Youngblood house? Yes, sir.

Then you ate the icecream? I went and put the package up and came back on the porch and just as I got back on the porch they were on the first door step.

When you went in and put the packages up you came back? Yes.

And looked down and they were on the first door step? Yes, they were coming up.

You didn't see them coming in back of you when you went in to put the packages up? No, sir.

You didn't see them walking up there at all until they got on the foot of the door step? No, sir, Johnny said he didn't even see them.

Did you go on eating your icecream? Yes, sir.

Where were you when they came up? I was sitting on the arm of the rocking chair.

In front of the door to your side of the house? Yes, sir.

At that time where was Emma—she was in front of the other door? Yes, sir. She was standing up there, leaning up there and come around and sat down in the chair.

Where was the sister of yours? She was sitting next to me.

Where was Johnny? He was sitting on the banister like this.

Which way was he looking? Just like that, he was just sitting up there looking back at Emma.

[fol. 219] What was the first thing that was said when they came up those steps? "Where is Richard?"

Whom were they talking about, Richard Lee? Yes, sir.

Who asked that question? Mr. Stembridge.

You are sure it was not Mr. Terry? No, sir, Mr. Terry didn't ever say nothing.

You mean Mr. Sam stood there all that time and never said a word? No, sir.

He never said a word at all? No, sir.

The whole time he was there? No, sir, he didn't even open his mouth.

That is the same thing your mama said, isn't it? I don't know what she said.

Didn't she say that same thing, that he never opened his mouth and didn't Johnny say the same thing? I don't know what they said.

You know this might well—did you see all this yourself? Yes, sir.

Then what was the next thing they said after "Is Richard here"? Said, "What you all going to do about this car?"

Who said that? Mr. Stembridge.

Whom was he talking to? Johnny.

Did he say "What you all going to do about this car" or "What you going to do Johnny"? Said, "What you all going to do about this car."

Then what happened? Johnny said, "Nothing."

Then what happened? Then Mr. Stembridge told Mr. Sam Terry to write that order and he went over there and wrote the order and read it and handed it back to Mr. Stembridge and Mr. Stembridge read it and handed it to Johnny.

What did Johnny do? He didn't do nothing. He asked Mama, Johnny said, "Mama must I sign this paper?" and Mr. Stembridge said, "Mama, hell."

And you were listening and you heard that—are you sure those are the exact words they used? Yes, sir.

You are sure he didn't say "Mama instead of "Ma", you are sure he said "Ma"? I know he said "Mama, hell" about something.

Does anybody also remember that besides you? Yes, sir.

Who all remembered it besides you? I guess all remembered it.

Why do you think they remembered it? They all heard it.

And you think everybody standing on that porch happened to have heard all that? There was not anybody else on their porch.

On whose porch? On their own porch.

When your mother started up the steps did she hear Mr. Stembridge say, "Ma, hell? Yes, she said, "Why don't you tell the man to take his hand out of your collar?"

Did Mr. Stembridge have Johnny by the collar? Yes, sir.

And he had the brass knucks out? He did not have them all out but had them most out.

Was he working his arm up and down like this? I didn't see him do that.

Which hand did he have the knucks in? I think he had them in this hand.

Had them in his left hand? Yes, sir.

[fol. 221] What did they look like, those knucks? They were brass and black.

Did you see them? Yes, sir.

When did you see them? When he had them, Emma said "Look at the man got on brass knucks" and I come around there.

You walked around and looked at them? Yes, sir.

You walked on the porch and got to where you could see them; while you were looking at them did he pull it out of his pocket? No, sir, he kept them in there.

Did you go up there and look in his pocket? No, sir.

How did you see them? He had them about almost out of his pocket.

Just enough for you to see them? Yes, sir.

And you went around there and looked at the pocket? Yes, sir.

Then what did Mr. Stembridge do? When she went to run he struck at her but he couldn't hit her then.

Did he strike at her and she ran? She ran and he ran behind her and struck at her.

Was she sitting down when this started? No, sir, she was standing up and she was leaning beside the door and went and stood in the door.

Did you see him when he struck at her? Yes, sir.

See the knucks on his hand? Yes, sir. He turned loose Johnny and struck at her.

Had knucks on his hand? Yes, sir, on his left hand.

He had something in his right hand? Yes, sir.

What did he have in it? Pistol.

Had a pistol in his right hand and he struck with his knucks? Yes, sir.

[fol. 222] They went in the house then? Yes, sir.

Was Johnny on the porch? When they went in the house?

Yes? He stood out there.

Johnny was out on the porch? Yes, sir.

Johnny had hold to Mr. Stembridge and Mr. Stembridge had hold to him? Mr. Stembridge had hold to Johnny; Johnny didn't have hold to him.

Right before Mr. Stembridge struck with those knucks wasn't he and Johnny standing up holding to each other? No, sir.

Was Johnny looking over at Emma? No, sir.

Where was he looking? I don't know, he was not looking at Emma.

You don't know where Johnny was looking? No, sir.

He was sitting up there and Mr. Stembridge turned him loose? Yes, sir.

Which hand did he have him with? With his right hand.

In his collar? Yes, sir.

And he turned him loose? Yes, sir.

And he took his knucks in his left hand and struck at Emma? Yes, sir.

Was Johnny looking at that? Yes, sir.

Do you think Johnny would have seen those knucks? I don't know whether he saw them or not.

You saw them? Yes, sir.

He was standing right there? Yes, sir.

What did he say, didn't say he saw them? I didn't hear him say.

Didn't you all get together and talk about it? Yes, sir, [fol 223] What did you say you were going to say then about getting mixed up—what did you say when you all sat down and talked about it, did you say you were going to say he had brass knucks or not? Sir?

When you all sat down to talk about it were you all supposed to say he had brass knucks? He had them.

You say he had a pistol in his other hand? Yes, sir.

Did he point the pistol at Emma as he went in the door? No, sir.

Are you sure he had a pistol in his hand? He didn't ever take it out until he got in the house because she was holding his hand when they were tied up.

You told me there on the on the porch he struck with his knucks with his left hand and had a pistol in his right hand? But didn't have it in his pocket.

What did he have, have his hand in the back pocket? No, had Johnny with his right hand and knucks on his left hand.

But he had turned Johnny loose and had struck with his knuckles and you said he had the gun in his right hand, after he turned Johnny loose, you said he struck with his left hand and had the gun in his right hand? He didn't take it out until he got in the house.

What did you say he had it in his right hand for a while ago—he didn't have it in his right hand? No, sir.

Where did he have it? In his pocket.

Which pocket? Coat pocket.

Which coat pocket, which side? On this side.

On the right hand side? Yes, sir.

Did you see it? I saw his pocket sticking out there.

[fol. 224] Do you reckon that could have been paper—what makes you think that was a gun—did you ever see the gun in his pocket? No, sir.

Did you see him when he pulled it out of his pocket? No, sir.

Where were you when he pulled it out of his pocket? I was in the house.

Were you where you could see him? Pete and him was tied up and I was in there where mama was.

Did you see him and Pete tied up? Yes, sir.

Did he have a gun when he and Pete were tied up? When she turned him loose I reckon he got it, when she turned loose his hand I reckon then he got his pistol and shot her in the arm.

You said you were looking at them? I walked by them when they were tied up.

You walked by them when they were tied up in the back room? It was not in the back room.

Where was it? In the second room.

You walked by them when they were tied up there in that room? Yes, sir.

Had there been any shooting before you walked by them? Yes, sir, Mr. Sam had done shot Mama.

Where were you? I was right behind Mr. Sam.

Did he walk by Emma and Mr. Stembridge? Yes, sir.

Mr. Sam walked by them? Yes, sir.

Then you walked right back of Mr. Sam, you walked by them too? Yes, after Mr. Sam went on I was right behind him.

You were right behind him when he shot all four pistol [fol 225] shots? Yes, sir.

Did he shoot any more than four times? No, sir, I don't reckon he did.

Did you count them, that he shot four times? No, sir.

Could you see around him? No, sir.

Did you say anything to him? No, sir I didn't say nothing to him.

You walked right on through the house; when you passed Mr. Stembridge and Emma had Mr. Stembridge started to shooting Emma? No, sir, she was holding his hand then.

That put you in the back of the house, in the kitchen? Yes, sir.

Then you turned around, did you see Mr. Stembridge shooting Emma? No, sir, I never turned around to look.

Did you go out the back door? No, sir, when he shot Pete in the arm she come up and went to sit on the trunk and then he shot her in the shoulder.

You say you had already passed by where they were back there before he ever shot? Yes, sir.

What did you do after you passed by there, did you go out the back door or did you go to your mother who was on the table? No, I still stood there.

Where was Mr. Sam? He was standing up there shooting Mama, he was almost opposite the bed.

He was standing there shooting Mama? Yes, sir.

Where were you then, in the kitchen with your Mama on the table? No, sir, we were in the third room.

I thought you said Mr. Sam went all the way through [fol. 226] the house and your Mama went up on the table and she looked back to see if Emma was going to be shot and Mr. Sam was still shooting and followed her all the way back? He didn't go any further than the third room, he didn't go in the kitchen.

Did you go any further than the third room? No, sir.

Where did you go after Mr. Sam shot your mother four times—you said you went back of Mr. Sam—did you stay right there? Yes, when Mr. Stembridge shot both of them ran out of the house.

Mr. Sam had shot your mother four times? Yes, sir.

And you were right in back of Mr. Sam? Yes, sir.

You said then no shooting had started? He shot Emma in the arm.

He had shot Emma in the arm before Sam had completed shooting your mother four times? I don't know what you say.

You said Mr. Sam shot your mother four times? Yes, sir.

Now tell me again exactly how it happened—your mother went in after Emma? Yes—no, sir, she went in behind Mr. Stembridge.

At the time he shot her the first time where was your mother? In the first room.

Where was she when he shot her the second time? She had gone by Mr. Stembridge in the second room when he shot her again.

She was going by Mr. Stembridge and Emma in the second room and he shot her again? Yes, sir.

[fol. 227] They were in the second room? Yes, sir.

Where did he shoot her the next time? Shot her once in the dining room.

Is that dining room the third room? Yes, sir, and then she went and laid on the table and he got right opposite the bed and shot her again.

The last time he shot her when she was lying on the table he went right back there, how close was he to her? He was not so close to her, about from that door to the step.

About as far as we are now? Yes, sir.

Were you right in back of him? Yes, sir.

When he shot the last time? No, sir, I was right by the side of them, behind them.

You were right back of Mr. Sam? Yes, sir.

So you had passed Emma and Mr. Stembridge and you were following Mr. Sam all the way back there—had they shot any when you passed? Who?

Mr. Stembridge or Emma either one, were they shot as you passed? No.

You passed right by them? Yes, sir.

How close did you get to Mr. Stembridge and Emma? They were standing right in the door and I walked right through.

In other words, they were standing in the door and the first to walk through was your mother? Yes, sir.

And the next to walk through was Mr. Terry? Yes, sir.

And the next to walk through was you? Yes, sir.

Who was the last to walk through? Nobody else.

[fol. 228] What about your little sister? She was standing there in the front room door.

She never did come in there at all? No, sir.

You had followed him right back into the kitchen and when he got as far as from you to me he shot your mother four times? Yes, sir.

What kind of gun did he have? I know it was black but I don't know what kind it was.

How many times did you say he shot? Mama?

Yes? Four times.

How many times did he shoot somebody else? Talking about Emma?

Yes? three times—four times.

How many times did he shoot when the bullets didn't go where he could find them, they went wild and hit the wall? I don't know whether they hit anybody but I know two are in the wall.

Are they still in the wall? Yes, sir.

How do you know? Nobody has gone in there to take them out.

Who told you about two in the wall that nobody had taken out? I have been there all the while and I have not seen anybody take them out.

What about the one in the bed, were you there when it was taken out? No, sir.

What about the hulls, did you have them picked up? No sir. That morning when I come I picked up a piece of lead behind the stove.

Did you see Mr. Stembridge when he shot Emma? I didn't see him when he shot her in the arm but I saw him when he [fol. 229] shot her in the shoulder and in her stomach.

Where were you standing when that happened? I was in the third room.

Where were they? Mr. Stembridge was standing beside the door and she was sitting on the trunk.

How close were you to them? I was on this bed and she was sitting in the foot.

You were on which bed? On Mama's bed.

And Emma was sitting on the trunk? Yes, sir.

How many times did Mr. Stembridge shoot Emma then? When she was sitting on the trunk?

Yes? Three times.

How did he do it, how did he shoot her, stand off from her or get close and shoot her? He just came to the door and did like that and shot her.

How close was he standing to her? Close to her.

Close as we are here now? Yes, sir.

Where was Mr. Terry then? He was still there. About the time Mr. Sam got there Mr. Stembridge and them came out together.

Did you go out the back door with your mother? No, sir, I come out the front door and the last I saw them they were going by the last house in the car.

You didn't go back and say anything to your mother? No, sir.

You came out of the front door? Yes, sir.

Did you see Johnny when you came out of the front door?
No, sir, he had gone back in the house.

ROSS JOINER, sworn for State.

[fol. 230] Direct examination.

Your name is Ross Joiner? Yes, sir.

Mr. Joiner, do you have a business here in Milledgeville?
Yes, sir.

Run a market known as Joiner's Market? Yes.

Do you know Mary Jane Harrison? Yes, sir.

The woman that was a witness here in this case? Yes, sir.

How long have you been knowing Mary Jane? About two years.

Do you know her general character and reputation in the community in which she lives? I think so, yes.

Does she work in your house? Yes, sir.

How long has she been working there? Oh, just a little over a year.

What is her general character and reputation in the community? I would think it was the very best.

From your knowledge of her character and reputation would you or would you not believe her under oath? Yes.

No cross-examination.

EUGENE A. ELLIS, recalled for the State.

Direct examination.

Mr. Ellis, did you take any photographs or pictures of the body of Emma Johnkin, the deceased, in this case? Yes, I did.

Have you those pictures with you? Yes.

Mr. Ennis: I object to those pictures of the body of the deceased being exhibited to this jury. It is prejudicial to this jury, improper and I move that the witness not be allowed to exhibit to this jury pictures of the deceased [fol. 231] woman.

By the Court: Mr. Baldwin, do you intend to offer the pictures in evidence?

Mr. Baldwin: Yes, they show the blows and bullet wounds on the body.

By the Court: You may go ahead.

Did you take this picture? Yes, I did.

Did you take this one yourself? Yes.

Where was the woman when you took these two pictures—was she dead then? Yes.

Do you see this one made by Mr. Stancil? Yes.

Where was her body then? In the undertaking establishment in Eatonton.

Come down here—I will ask you whether or not this spot is the bullet wound in the back of her shoulder? Yes.

Did you see this before she was dead, those holes? Yes.

On her back in this picture, I will ask you whether or not that is a burned place where the bullet evidently crossed her back? Yes, I would say so.

This cut open place on her body is what? That is where they cut it open to get the bullet out of her pelvis.

This picture here of her abdomen, you see three holes there? Yes.

What are they? This one here goes right into the abdomen and this one just goes in and comes back out and goes back in.

It went in and came out and then went back in? Yes.

Like it went through a wrinkle in her stomach?

[fol. 232] Mr. Ennis: I would like for my brother not to continue to lead this witness.

By the Court: I sustain the objection to the question as leading.

Explain that wound on her to the jury? The bullet went in here and came out and went back in there.

Cross-examination.

Did you probe that? No, sir, I didn't.

You just make that statement from observation of the bullet holes? Yes, from my observation.

Dr. Wood was the physician in charge of this patient, was he not? I believe he was.

Dr. Wood would know exactly whether it went in or came

out or whatever happened, wouldn't he? I would say, yes.

Are you attempting to testify to your positive knowledge it went in and came out? That was my belief.

That was your belief, was that what you testified? That is right.

Mr. Evans: I move to rule his belief out of the record.

By the Court: Yes, I will let it go out.

Mr. Evans: In other words, his previous testimony as to that bullet, where it travelled, he said was based on his belief—you rule that all out?

By the Court: As to his belief.

Redirect examination.

You looked at this wound on her yourself? Yes.

Look at it carefully? Yes.

After your examination of the hole state what your opinion is as to what the bullet did?

[fol. 233] Mr. Evans: He has just stated his belief. There is no difference between his opinion and his belief.

By the Court: As I understand this witness is undertaking to testify his opinion as to the course of the bullet?

Mr. Baldwin: Yes, the bullet right there.

By the Court: I will let him state the facts and then he can state his opinion based on those facts.

Did you look at the wounds? Yes, I did.

Did you see them while she was alive and also while she was dead? Yes.

In your opinion what course did the bullets take? In my opinion the bullet went into the skin and came out and went back in again.

Mr. Evans: I take my objection.

By the Court: I overrule the objection.

Recross examination.

Is Dr. Woods available? I would not know.

So far as you know he is in town? I believe he is.

Redirect examination.

If he is available he is available to them too? Yes.

Mr. Baldwin: We offer in evidence these pictures.

Mr. Ennis: I would like to renew my objection to the

admission in evidence of the three pictures he has offered and especially do I direct my remarks to the picture that was made after the body had been mutilated and the change in the character of the body when they were getting this bullet out. I think that would not be admissible; it was not as it was when she died but had been changed by the operation of the doctors.

[fol. 234] By the Court: I will overrule it.

Mr. Baldwin: We have tendered in evidence these pictures; I think you let them in.

Mr. Ennis: I did not quite get the court's ruling this morning when the defendant offered in evidence the report of George T. Cornett, assistant director of the Fulton County Scientific Crime Laboratory, referred to in the trial of this case as a ballistic report. We are offering it now in evidence.

Mr. Baldwin: No objection.

By the Court: It is in evidence without objection.

State rests.

Testimony in Rebuttal for the Defendant.

S. L. TERRY, Recalled for Defendant.

Direct examination.

Mr. Terry, when you and Mr. Stembridge went up on the porch the afternoon of the shooting were there any children on the porch or in the house or in the yard that you saw? Not from where I stood, I didn't see anybody but those three people, not at any time.

Did you see a little girl about 11 years old on the porch? No, sir, I didn't see anybody but those three people.

Did a little girl 11 years old follow you around? No, sir, she didn't have to follow me around because I didn't move very much.

Was there anybody in the yard, any children in the yard? No, sir, not that I could tell.

Cross-examination.

You moved when you were leaving there? I sure did.
[fol. 235] (Counsel agree that the chart goes in evidence.)
Defendant closes.

Mr. Ennis: I wish to renew my objections to the testimony of Mary Jane Harrison with reference to her being shot by Sam Terry and likewise renew objection to the testimony of Mary Jane Harrison in exhibiting wounds to the jury. The grounds of objection are that the defendant is not on trial for committing any offense against the witness Mary Jane Harrison that he is not on trial for shooting Mary Jane Harrison. The witness Mary Jane Harrison stated that the defendant did not shoot her. The evidence is wholly prejudicial and harmful to the defendant and is designed to prejudice the jury and on those grounds I renew the objection.

By the Court: I will adhere to my former ruling.

Mr. Ennis: Your former ruling was that you left it in for the present time and is it overruled now?

By the Court: I overrule your renewed motion to strike it.

JUDGE'S CERTIFICATE TO TRANSCRIPT

Georgia, Baldwin County.

I hereby certify that the foregoing transcript of the evidence in the case of State of Georgia vs. Marion Stembridge which was tried at the July Term, 1949, of Baldwin Superior Court, is hereby identified as the transcript of said evidence referred to in the foregoing bill of exceptions as "Exhibit 'A'".

This 20th day of March, 1951.

George S. Carpenter, Judge of Superior Courts,
Ocmulgee Circuit. U-208.

[fol 236] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 237] SUPERIOR COURT OF BALDWIN COUNTY

[Title omitted]

EXTRAORDINARY MOTION FOR NEW TRIAL

Now comes Marion W. Stenbridge and files this his Extraordinary Motion for New Trial based on the following grounds:

1. Movant was indicted for the murder of Emma Johnekin by the Grand Jury of Baldwin County at the July Term, 1949 of Baldwin Superior Court. At the same term he was tried before a jury, the court and jury spending two days in hearing evidence. Thereafter, the jury retired and deliberated over the case for an additional two days and on the second night, after being recharged by the court that mistrials were serious, said jury brought in a verdict finding the defendant guilty and he was sentenced to serve a term in the penitentiary of from one to three years.

2. Movant shows that the State contended that he followed Emma Johnekin into the third room of the house after he had already shot her, and that when she went into this third room that she sat on a trunk, and that movant then and there shot her through the stomach with his pistol. The shooting took place in a six-room house which was built for two families. There were three rooms on each side of the house with a partition in the middle. On the [fol. 238] front of the house was a front porch which served both apartments.

3. Movant defended on the ground that he had to shoot Emma Johnekin, as well as her associate, Mary Jane Harrison, in self-defense; that he had gone to this house in an effort to locate some negro men who owed him some money and that while he was talking to one of these men on the front porch that these two negro women interrupted his conversation, and that both of them attacked him, and that one of them started into the house for a pistol and when he followed her into the front room, the other woman came in and they obtained the pistol and were grappling with him. Movant shows that he further contended that

he never did go beyond the limits of the first room, and that all of the shooting which he did in self-defense was in the first and front room of the house.

4. Movant shows that the State vigorously contended that the shooting of Emma Johnkin in the third and last room of the house while she was seated on the trunk, after having first been wounded, was coldblooded murder.

5. Both the Johnkin woman and the Harrison woman were wounded by bullets fired by Movant, and after the shooting was over both were carried to a Milledgeville hospital for treatment. Investigator J. E. Jones, of the Georgia Bureau of Investigation, was assisting the State in investigating this affair and in the course of his investigation took a written statement from Mary Jane Harrison which he, the said Jones, intended to use as a dying declaration. The Harrison woman did not die, even though her condition was critical and she recovered and testified [fol. 239] vigorously for the State and against Movant in the trial before the jury. She testified positively and unequivocally that Movant did go into the third room of the house and that he did shoot Emma Johnkin after he had already wounded her in the front of the house, and after she had seated herself on a trunk in this rear room.

6. During the trial of the case, while Investigator Jones was on the witness stand, it was developed on cross-examination that Mary Jane Harrison had given him a signed, written statement on the same day that the shooting took place, and that this statement was intended by the said Mary Jane Harrison as a dying declaration. The witness, Jones, testified that the original of this statement had been turned over to the Chief of Police of Milledgeville, and that the other copy had been sent to his headquarters in Atlanta.

7. Movant shows that he did not know anything about this written, signed statement prior to the trial, nor did his attorneys know of said statement, and that it was not available to him for use in connection with his defense.

8. Movant attaches hereto an affidavit signed by Investigator Jones and also the signed, written statement made by Mary Jane Harrison on the same day that the shooting took place. The original of this statement will be pre-

presented and exhibited to the court when this motion is heard.

9. Movant shows that the importance of this statement given by the Harrison woman is in these words, "and Emma never got out of the front bedroom until after the men (referring to Stenbridge and Terry) had gone."

[fol. 240] 10. Movant shows that he verily believes that if this evidence had been available to him at the time of the trial that the jury would have acquitted him because said signed statement was made by the Harrison woman as a dying declaration when she had given up hope or recovery and when she expected to pass out and meet her Maker.

11. Movant says that this new evidence was discovered in September of 1950 by one of his attorneys who was checking into his case, and that prior to said date Movant had no knowledge of the contents of this signed statement.

12. Movant attaches hereto affidavits from nine jurors who served in this case in which each of them swear that if this statement had been introduced in evidence they would have returned a verdict of acquittal in said case.

13. Movant shows that there is a radical difference between testimony of the Harrison woman and the other evidence in the case. Emma Johnkin, the dead woman, testified that she was engaged in a tussle with Stenbridge and that the Harrison woman "ran where I was and pulled him loose from me", and also "Mary pulled us apart". The Harrison woman swears that Sam Terry shot her; whereas the Johnkin woman says that Stenbridge shot at Mary Harrison; and the ballistic reports conclusively show that all of the bullets on this occasion came from the gun of Stenbridge. The Harrison woman is not in a position to swear where the shooting took place because in her testimony she said she was lying on a table, face down, while Emma was being shot, and that when she attempted to get up from the table that Sam Terry shot her again.

[fol. 241] 14. Movant shows that after his conviction in this court, he then filed a motion for new trial which was overruled, and that he thereupon filed a bill of exceptions with the Court of Appeals, which court affirmed the judgment of the trial court. Thereafter, he filed application for

certiorari with the Supreme Court of Georgia which application was denied, although Justice William Atkinson of said court dissented. The remittitur from the court of Appeals has now been made the judgment of this court, and this motion is filed during the January Term, 1951 of said court.

Wherefore, Movant prays that an order be granted by this court, directed to the Solicitor-General of the Ocmulgee Circuit, requiring him to show cause before this court why this Extraordinary Motion for new trial should not be granted, and that pending a hearing on said order that supersedeas be granted staying the sentence of this court until this motion can be heard and determined.

Frank O. Eyns, Marion Ennis, James M. Watts,
Jr., Martin, Snow & Grant, Attorneys for Movant.

EXHIBIT

3-7-49

Attempt Murder: Suspect: M. W. Stembridge. Statement of Mary Jane Harrison, C/F 40 Milledgeville, Ga.

I had just come home, I had been to the gin to pay some bills for my husband, George, and when I came up on the [fol. 242] porch, Mr. Stembridge, Mr. Sam Terry, Johnny Coeper, Emma Johnekin, and a little colored girl, Lavene Harrison, were on the porch.

I heard Mr. Stembridge tell Johnny that he must sign a paper, agreeing to pay for an automobile which had been financed by Mr. Stembridge. Johnny told him that he would not sign the papers, because Mr. Stembridge had already got the car back, and he was not the one who had bought the car in the first place.

Mr. Stembridge told him that he would pay, or he would kill him. Mr. Stembridge used some curse words, and grabbed Johnny in the collar, and drew back with his other hand.

Just as this happened, Emma, who had been listening all the time to the argument, said "Lord have Mercy, that

man has got on brass knucks," then Emma turned to go in the house.

Mr. Stenbridge said, "God Damn it, what business is it of yours, and ran in the house after her, and left Johnny standing on the porch. Inside the house, Mr. Stenbridge hit Emma on the right side of her head with the brass knucks, and she fought back to keep him from hitting her again. He knocked her down on a foot locker which is at the head of the bed, and pulled out of his belt a gun. He shot her in the right arm, and then again in the stomach.

I ran out to try to stop him, and I was shot in the back, I do not know who did that shooting, unless it was Mr. Sam Terry, he was the only one who was behind me. I ran on into the kitchen, and tried to lay down on the table, [fol. 243] and then another shot hit me in the back, and then a third one hit me in the left side. I got up, and tried to go out the back door, and got out of the door in time to see the two white men drive down the road in the direction of town.

Questions by the G. B. I.

Why did Johnny not pay for the car?

The car had been wrecked, and the one who had bought it found out that his insurance would not pay for the wreck, and he had to give the car back to Mr. Stenbridge. Now, Mr. Stenbridge wanted them to continue to pay for the car, even though they had returned it to him. Johnny was not the one who bought the car in the first place, and he had no reason to agree to sign anything.

Did you or Emma have a gun, and did either of you say that you were going in the house after a gun?

No, we did not mention a gun. There is one in the house, but it was in the back bed room, near the kitchen, and neither of us had got that far shot at least one time, and Emma never got out of the front bed room until after the men had already gone.

Did you curse the white men?

No sir, I did not even speak to them, and had not done anything for them to be mad with me for until I started to try to stop the man from shooting Emma.

Who was the one who actually owed the money to Mr. Stembridge?

It was Richard, Johnny's brother who owed the money if any one did, and he was not at home, he was off working.

Did he actually come in the house after you and Emma? [fol. 244] Yes, He came in after we had gone off the porch, and He was not told to follow, he ran in after Emma when she said he had on brass knucks.

Did you see the brass knucks?

Yes, he had them on his left hand.

Did you see Mr. Sam with a gun?

No, but I was shot from behind, and Mr. Stembridge was standing in front of me at the time I was shot.

I swear that this information is correct to the best of my memory, and I do not have any other information which I have not already said, that is the way it happened.

Mary Jane Harrison.

EXHIBIT

MARION W. STEMBRIDGE vs. THE STATE OF GEORGIA

Georgia, Baldwin County

Personally appeared Frank O. Evans who, having first been sworn, says: That he was leading counsel for Marion W. Stembridge in above stated case. Deponent says that the newly discovered evidence, as set forth in Marion W. Stembridge's extraordinary motion for new trial attached hereto, was not known to him before the trial and before the verdict in the abovestated case, that said newly discovered evidence could not have been discovered by the exercise of ordinary diligence, that deponent interviewed every known witness of this case and the investigating officers before the original trial of said case and that he got from none of them any intimation that any purported dying declaration was given by Mary Jane Harrison; that [fol 245] deponent learned during the trial of said case that Mary Jane Harrison had given a purported dying declaration and demanded of the State said purported dying dec-

laration but that the State failed and refused to give to deponent a copy of said purported dying declaration, that deponent could not require discovery of said purported dying declaration from the State, and that deponent learned of the contents of said purported dying declaration only recently when J. E. Jones (agent for the Georgia Bureau of Investigation) showed to deponent and T. Baldwin Martin, Sr. the purported dying declaration of Mary Jane Harrison, after said J. E. Jones (who was excluded from the court room during the testimony of every other witness except himself in the trial of said case) learned that said Mary Jane Harrison had testified during the trial of the case that Marion W. Stemberge went into the third room of the house and shot Emma Johnkin while she was sitting on a trunk.

Frank O. Evans.

Sworn to and subscribed before me, this 27th day of September, 1950. Margaret Bailey, Notary Public, Baldwin County, Georgia.

[Vol. 246]

EXHIBIT

MARION W. STEMBRIDGE vs. THE STATE OF GEORGIA

Georgia, Baldwin County

Personally appeared Marion W. Stemberge, the applicant for a new trial in the above-stated case, and Marion Ennis, and James M. Watts, Jr., his counsel, each of whom, having first been sworn, says:

That he did not know of the evidence set out in the ground of the motion for a new trial filed herewith, before the trial and before the verdict in the above-stated case, that this evidence could not have been discovered by the exercise of ordinary diligence, and that each of the affiants interviewed every witness and every prospective witness possible before the trial of the said case, and that each of them saw and heard Frank O. Evans (counsel in

said case) during the trial of said case demand of the State the discovery of this newly discovered evidence.

Marion W. Stembridge, Marion Ennis, James M. Watts, Jr.

Sworn to and subscribed before me, this 11th day of October, 1950. Margaret Bailey, Notary Public, Baldwin County, Georgia.

[fol. 247]

EXHIBIT

[Title omitted]

Personally appeared J. E. Jones, who, having first been sworn, says:

(1) I am an agent for the Georgia Bureau of Investigation, and I am assigned to the Ocmulgee Circuit.

(2) As such agent, I helped to investigate the case of the State vs. Marion Stembridge, having been requested to do so by the law enforcement officers in Baldwin County.

(3) Marion Stembridge was indicted for murder and was accused of the killing of Emma Johnekin. He was tried in Baldwin Superior Court and was convicted and was given a sentence of from one to three years at the July term, 1949. I was called as a witness in behalf of the State, but was not permitted to remain in the courtroom except while on the witness stand. In view of this, I did not know until recently what Mary Jane Harrison had sworn to on the stand.

(4) Her testimony on the stand was in direct contradiction of her dying declaration because in her dying declaration she stated that all of the shooting took place in the first room of the house while in her testimony on the stand she stated that Marion W. Stembridge followed Emma Johnekin into the third room of the house and shot her while she was sitting on a trunk.

[fol. 248] (5) The statement which the Harrison woman intended as a dying declaration undermines the contention of the State that Marion Stembridge followed Emma Johnekin

kin into the third room and shot her while she was sitting on a trunk.

(6) That the attached statement signed by Mary Jane Harrison was given by her as her dying declaration within an hour or two after the shooting and before anyone had had time to get to her and influence or change her statement.

(7) That this intended dying declaration was not qualified in any way by Mary Jane Harrison that she would "probably" live, but was given by her as a dying declaration when she felt that she was in a dying condition and would not recover.

(8) Her language in this statement, namely, "and Emma never got out of the front bedroom until after the men had already gone" verifies and corroborates the statement of Marion Stembridge made immediately after the shooting and at the time of the trial that he never went out of the first room of the house and that he shot these women while they were fighting him.

(9) From reports which I have heard since the trial, I believe that the jury would have freed Stembridge if this statement had been placed before them, and I likewise believe that it would change the results if the case should be tried again.

(10) The attorneys representing Stembridge had no way of knowing of this statement of Mary Jane Harrison prior to the trial because the original was turned over to [fol. 249] officers in Baldwin County, and the copy was mailed to my headquarters in Atlanta. Since the Harrison woman has recovered, I knew that the State could not introduce this signed statement at the trial and I said nothing about it even to Stembridge or his counsel. Some reference to the statement was made during the trial and in response to questions, I did state that she gave such a statement, but that it was turned over to the officers of Baldwin County and a signed copy sent to my headquarters in Atlanta.

(11) The first time that the attorneys for Marion Stembridge ever saw this statement, so far as I know, was in September of 1950. Mr. Baldwin Martin, attorney who did not participate in the trial, was at Milledgeville. He

had requested my organization to make some further investigation, and after I reviewed the files, I found a signed copy which I voluntarily gave to Mr. Martin and to Mr. Frank Evans.

(12) I reside in Madison, Georgia, which is in the Ocmulgee Circuit.

This affidavit is given in connection with the extraordinary motion for new trial which is to be filed in this case by Stembridge.

J. E. Jones.

Sworn to & subscribed before me, this 15th day of September, 1950: Hendley V. Napier (Notarial Seal), Notary Public, Georgia, State at Large. My commission expires February 7, 1951. Notary Public.

[fol. 250]

EXHIBIT

MARION W. STEMBRIDGE vs. THE STATE OF GEORGIA

Georgia, Baldwin County

Personally appeared before the undersigned officer J. M. Murphy who, first being sworn, says:

That the witness, J. E. Jones, upon whom plaintiff is depending to give the newly-discovered evidence in said case, resides at Madison, Ga., his associates are: Holmes J. Hawkins, Sheriff Jones County, Gray, Ga.; Bernard Butts, Sheriff, Hancock County, Sparta, Ga.; and J. L. Paschal, Sheriff Putnam County, Eatonton, Ga.; that said J. E. Jones helped in the investigation of above-stated case and that he is familiar with the details thereof; he has a good character and his credibility is beyond question.

J. M. Murphy.

Sworn to and subscribed before me this the 27th day of September, 1950. Marion Cooper, Notary Public, Baldwin County, Ga.

EXHIBIT

Georgia, Baldwin County.

Personally appeared before the undersigned officer D. M. Cox who, first being sworn, says:

That the witness J. E. Jones, upon whom plaintiff is depending to give the newly-discovered evidence in said case, resides at Madison, Ga., his associates are: Holmes [fol. 251] J. Hawkins, Sheriff Jones County, Gray, Ga.; Bernard Butts, Sheriff Hancock County, Sparta, Ga.; and J. L. Paschal, Sheriff Putnam County, Eatonton, Ga.; that said J. E. Jones helped in the investigation of above-stated case and that he is familiar with the details thereof; he has a good character and his credibility is beyond question.

D. M. Cox.

Sworn to and subscribed before me this the 27th day of September, 1950. Marion Cooper, Notary Public, Baldwin County, Ga..

AFFIDAVIT OF FOREMAN OF JURY

Georgia, Baldwin County.

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, T. E. Owen; who after being duly sworn, deposes and says that he was Foreman of the jury in the case of The State v. Marion W. Stenbridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnkin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

[fol. 252] Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the men had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stenbridge and to indicate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

T. E. Owen.

[fol. 253] Sworn to and subscribed before me, this December 15, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

EXHIBIT

AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, W. A. Ivey, who after being duly sworn, deposes and says that he was a

member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased Emma Johnkin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

[fol. 254] "Emma never got out of the front bedroom, until after the men had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indicate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

W. A. Ivey.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

[fol. 255]

EXHIBIT

AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, B. F. Anderson, who after being duly sworn deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnkin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the men had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indi-

cate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

B. F. Anderson.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

9
EXHIBIT

AFFIDAVIT OF JUROR

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, H. E. Taylor, who after being duly sworn deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court, and, as a member of that jury, found the defendant [fol. 257] guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnekin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. The sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the man had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testi-

mony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

[fol. 258] This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indicate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

H. E. Tyler.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

EXHIBIT

AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, O. D. Horton, who after being duly sworn, deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnnekin, into [fol. 259] the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date

of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

“Emma never got out of the front bedroom, until after the men had already gone.”

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in Deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stenbridge and to indicate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

O. D. Horton.

[fol. 260] Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

EXHIBIT


AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, W. D. Bone, who after being duly sworn, deposes and says that he was a member of the jury in the case of The State v. Marion W. Stenbridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one of three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnkin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

[fol. 261] "Emma never got out of the front bedroom, until after the men had already gone." 

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stenbridge and to indicate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

W. D. Bone.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

[fol. 262]

EXHIBIT

AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, A. W. Layfield, who after being duly sworn, deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnekin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the man had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony [fol. 263] of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indi-

cate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

A. W. Layfield.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

[fol. 264]✓

EXHIBIT

AFFIDAVIT OF JUROR.

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, Roy S. Alford, Jr., who after being duly sworn, deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnkin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the men had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed

to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his [fol. 265] conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on the retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that, he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indicate to the Honorable George S. Carpenter that I would have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

Roy S. Alford, Jr.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

EXHIBIT

AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, T. H. Ennis, who after being duly sworn, deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

[fol. 266] Deponent says that, in voting to find the defendant guilty, he did so because of the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnekin, into the third room of the house and that in the

third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the men had already gone."

Deponent says that had this sworn statement of Mary Jane Harrison been before him, he would have never agreed to any verdict except one of not guilty, as this statement, in deponent's opinion, is so contradictory to the sworn testimony of Mary Jane Harrison as given on the stand that his conscience would not allow him to believe her under oath.

Deponent further says that if he were a juror on retrial of the defendant that under this new evidence in which Mary Jane Harrison impeaches herself, that he would not find the defendant guilty.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indicate to the Honorable George S. Carpenter that I would [fol. 267] have never agreed to a verdict of guilty if the sworn statement of Mary Jane Harrison, dated March 7, 1949, had been available for my consideration at the time of the trial.

T. H. Ennis.

Sworn to and subscribed before me, this December 27, 1950. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

EXHIBIT

AFFIDAVIT OF JUROR

Georgia, Baldwin County

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, W. R. Torrance,

who after being duly sworn, deposes and says that he was a member of the jury in the case of The State v. Marion W. Stembridge at the July Term, 1949 of Baldwin Superior Court, and, as a member of that jury, found the defendant guilty of manslaughter and fixed his punishment at one to three years.

Deponent says that, in voting to find the defendant guilty, he distinctly recalled the direct and unqualified sworn testimony of Mary Jane Harrison, in which she swore positively that the defendant followed deceased, Emma Johnekin, into the third room of the house and that in the third room the defendant shot deceased through the abdomen.

Deponent says that counsel for the defendant have exhibited to him a copy of a purported sworn statement given [fol. 268] by this same Mary Jane Harrison to the G. B. I., under date of March 7, 1949, and which statement was given by Mary Jane Harrison as a so-called dying declaration. This sworn statement of Mary Jane Harrison asserts:

"Emma never got out of the front bedroom, until after the men had already gone."

Deponent says that, in his opinion, the jury should have had the benefit of having had before it this written sworn statement of Mary Jane Harrison. Since it was not made available to them and was in the possession of the prosecution, it is deponent's opinion and feeling that the defendant should be given a new trial and that the new jury should have the written sworn testimony of Mary Jane Harrison before it.

This affidavit is given to be used in an extraordinary motion for new trial by Marion W. Stembridge and to indicate to the Honorable George S. Carpenter that I favor a new trial for the defendant.

W. R. Torrance.

Sworn to and subscribed before me, this January 1, 1951. Margaret Bailey (Notarial Seal), N. P., Baldwin County, Georgia.

[fol. 269] IN SUPERIOR COURT OF BALDWIN COUNTY

ORDER RE EXTRAORDINARY MOTION FOR NEW TRIAL

The foregoing Extraordinary Motion for New Trial read and considered. It is ORDERED:

1. That a copy of the Extraordinary Motion for New Trial be served on C. S. Baldwin, Jr., Solicitor-General of the Ocmulgee Circuit, and that said Solicitor-General show cause before me at Milledgeville at 10:00 a. m. on the 10th day of February, 1951, why said Motion should not be granted.

2. It is further ordered that said hearing shall be by affidavits and documentary evidence and that copies of affidavits shall be served on the opposite party at least ten days before said hearing, and that any cross-affidavits which may be used shall be served at least five days before said hearing.

It is further ordered that the original brief of evidence on file with the Clerk of Baldwin Superior Court, together with the stenographic report made by the Court Reporter shall be available and shall be used and considered on said hearing.

Further ordered that the movant shall have the privilege of offering in evidence his Extraordinary Motion for New Trial which has been verified, together with the affidavits attached thereto.

3. It is further ordered that the judgment of the court sentencing the movant be and the same is hereby superseded until the further order of this court, and that the appearance and heretofore given by said Movant shall remain in full force and effect until the hearing of this motion.

[fol. 270] This 15th day of January, 1951.

George S. Carpenter, J. S. C. O. C.

[Title omitted]

ORDER OVERRULING EXTRAORDINARY MOTION FOR NEW TRIAL—
March 1, 1951

It is ordered that movant's extraordinary motion for a new trial, in the above stated case, be, and the same is hereby, overruled. Ordered further that the supersedeas heretofore granted be continued for a period of twenty days from this date, unless otherwise ordered.

This 1st day of March, 1951.

George S. Carpenter, Judge Superior Courts, Ocmulgee Circuit.

[fol. 271] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 272] IN THE COURT OF APPEALS OF GEORGIA

33573

STEMBRIDGE V. THE STATE

OPINION

By the Court:

(a) Newly discovered evidence which is only impeaching in character will not authorize the grant of a new trial.

(b) The Court of Appeals is a court for the correction of errors of law only and is not vested with discretionary power as to issues of fact. *Blanchard v. Savannah River Lumber Co.*, 40 Ga. App. 416, 419 (149 S. E. 793).

This case first appeared before this court after the plaintiff in error had been convicted in the Superior Court of Baldwin County for the offense of voluntary manslaughter. See *Stembridge v. State*, 82 Ga. App. 214 (60 S. E. 2d 491). During the trial of that case a witness for the State, Mary Jane Harrison, testified that the victim, Emma Johnekin, after having been struck and shot by the defendant, entered the third room of the apartment, which consisted of four

rooms located one directly behind the other with doorways opening in a straight line; that the victim after entering the third room seated herself on a trunk located therein, and that the defendant followed her into this room and shot her twice more while she was seated on the trunk. After the judgment of this court became final, the defendant filed in the trial court an extraordinary motion for a new trial on the ground of newly discovered evidence. Attached to the extraordinary motion for a new trial and made a part thereof is a statement made by the witness Mary Jane Harrison shortly after the shooting and while [fol. 273] she lay in a wounded condition in the hospital, she having also been shot on the occasion on which Emma Johnekin was killed. This statement was made as a dying declaration but the witness recovered and testified at the trial. A part of the statement set up in the extraordinary motion for a new trial and alleged to be material thereto is as follows: "We did not mention a gun. There is one in the house, but it was in the back bed room [third room] near the kitchen and neither of us had got that far—shot at least one time, and Emma never got out of the front bed room until the men had already gone."

Not so?
A. 183

The extraordinary motion for a new trial is also supported by the affidavit of J. E. Jones, an investigator connected with the Georgia Bureau of Investigation, to the effect that he turned the statement of Mary Jane Harrison over to the defense attorneys in September, 1950, some months after the conviction, and that he had not known that she had sworn contrary to this statement on the trial or he would have called the matter to their attention at that time. Also in support of the motion were affidavits of the defense attorneys which stated in substance that they did not know until the trial of the case that such a statement had been made, although they made every possible effort to uncover all pertinent evidence. Also attached to the motion were the affidavits of ten of the jurors who convicted the defendant for the offense of voluntary manslaughter on the trial, all of the jurors stating that had the newly discovered evidence consisting of the statement [fol. 274] of Mary Jane Harrison which contradicts material portions of her testimony been introduced in evidence

on the trial, they would never have agreed to any verdict except one of not guilty.

The extraordinary motion for a new trial was overruled by the trial judge and the exception is to this judgment.

TOWNSEND, J. (After stating the foregoing facts.)

Code § 70-204 states in part as follows: "A new trial may be granted in all cases when any material evidence, not merely cumulative or impeaching in its character, but relating to new and material facts, shall be discovered by the applicant after the rendition of a verdict against him." Extraordinary motions for a new trial based on newly discovered evidence are provided for in Code § 70-303. From the affidavits attached to the motion it appears that the defendant's attorneys could not, in the exercise of all diligence, have discovered prior to the trial that the chief witness for the State had made prior contradictory statements which might have cast serious doubt on her credibility as a witness. It further appears that evidence that the defendant and the deceased did not leave the first room would have been material, since on the trial of the case the defendant contended that he shot the Harrison woman in an effort to protect himself against an assault by her, whereas it was the State's contention that as she fled from him to the back of the house he deliberately followed with the intention of killing her. Under Code § 38-1803, [fol. 275] one method of impeaching a witness is by proving contradictory statements previously made by her as to matters relevant to her testimony and to the case. When this is done, the effect of the evidence and the credibility of the witness is entirely a matter for the jury to determine. See *Reed v. State*, 163 Ga. 206 (135 S. E. 748). It is thus evident that the newly discovered evidence is no more than impeaching in character, for which reason it falls under the inhibition of Code § 70-204, although in every other respect it meets the requirements of this Code section dealing with the circumstances under which a new trial may be granted on the ground of newly discovered evidence. See *Taylor v. State*, 77 Ga. App. 532 (48 S. E. 2d, 711); *Burke v. State*, 205 Ga. 656 (54 S. E. 2d, 350).

(b) It has been frequently held that the ultimate criterion by which the merit of newly discovered evidence

should be measured is the probability of a different result. See *McDaniel v. State*, 74 Ga. App. 5 (38 S. E. 2d, 697); *Harper v. State*, 50 Ga. App. 298 (177 S. E. 886); *Todd v. Jackson*, 24 Ga. App. 519 (101 S. E. 192); *Carson v. State*, 29 Ga. App. 82 (92 S. E. 549); *Paden v. State*, 17 Ga. App. 112 (86 S. E. 287); *Nolan v. State*, 14 Ga. App. 324 (82 S. E. 377); *Deason v. State*, 11 Ga. App. 759 (76 S. E. 73); *Fehn v. State*, 11 Ga. App. 328 (75 S. E. 208); *Moore v. State*, 11 Ga. App. 259 (74 S. E. 1102). These cases must be distinguished from the one at bar because the newly discovered evidence was of a character whose probative value might be assessed by the courts in that it proved a new and different state of facts rather than [fol. 276] merely attacking the credibility of the witness, in which latter case its value is within the exclusive determination of the jury. We know of no better way to show such value than by the affidavits of the ten jurors that they would have voted for a verdict of not guilty had this evidence been presented to them. This was matter for the consideration of the trial court, in whose discretion the grant or refusal of an extraordinary motion for a new trial largely rests. See *Rogers v. State*, 129 Ga. 589 (4) (59 S. E. 288); *Brown v. State*, 141 Ga. 783 (1) (82 S. E. 238); *Towler v. State*, 24 Ga. App. 362 (100 S. E. 787). The Court of Appeals, however, is a court for the correction of errors of law only and is vested with no such discretion. It can pass only upon the question of whether the action of the trial court in overruling the extraordinary motion for a new trial was error as a matter of law. The matter being discretionary with him, the judgment was not erroneous.

However, the excellent showing made might constitute a compelling reason for a tribunal invested with discretionary powers, such as the Pardon and Parole Board of this State, to take affirmative action which is beyond the purview of this court.

The trial court did not err in overruling the motion for a new trial.

Judgment affirmed. MacIntyre, P. J. and Gardner, J. concur.

[fol. 277] IN THE COURT OF APPEALS OF THE STATE
OF GEORGIA

33573

M. W. STEMBRIDGE V. THE STATE

JUDGMENT—June 5, 1951

This case came before this court upon a writ of error from the Superior court of Baldwin county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. MacIntyre, Gardner and Townsend, JJ., concur.

[fol. 278] IN THE COURT OF APPEALS OF GEORGIA

[Title omitted]

MOTION FOR REHEARING—Filed June 15, 1951

Comes now plaintiff-in-error in above stated case and, within the time allowed by law, files this his motion for rehearing in the case stated, and for grounds thereof, says:

1. Plaintiff-in-error first wishes to thank this Court of Appeals for the next to the last paragraph in their above referred to opinion, in which this court states in effect that they believe that plaintiff-in-error is not guilty, and that they believe that he has newly discovered evidence that will show his innocence, and in which they recommend plaintiff-in-error to the mercy of the Pardon Board.

However, an innocent man is not looking for mercy. He is looking for justice. And, in Georgia, no innocent man should be forced to appeal to the mercy of anyone; and particularly is this true when he has discovered evidence that will prove his innocence while there was still time for the courts to grant him a new trial, so that he might place this newly discovered evidence before a jury.

2. The court, in its opinion, has held [under (b) page 4, typewritten opinion] that: "It has been frequently held that the ultimate criterion by which the merit of newly

[fol. 279] discovered evidence should be measured is the probability of a different result. (A number of cases are cited). These cases must be distinguished from the one at bar because the newly discovered evidence was of a character whose probative value might be assessed by the courts in that it proved a new and different state of facts."

Plaintiff-in-error respectfully submits that this court has overlooked the fact that the newly discovered evidence in this case is of a character whose probative value may be assessed by the courts in that this newly discovered evidence proves a *new* and *different* state of facts. These facts (that plaintiff-in-error never left the first room) have never been in this case before. These facts are *new* to this case. What witness ever testified to these facts before? No witness ever testified to these facts before. No one, no one, ever testified to these facts before and a word by word check of the Record will show that no one ever testified to these facts before. It is a matter of truth, a historical truth, that no one ever testified to these facts before and that these are *new* facts. These facts are *new*.

These facts are a *different* state of facts. What witness in this case has testified to this state of facts? No one. No witness ever testified to this state of facts before. It is a historical truth and a check of the Record will show that *no one* ever testified to this state of facts before. This state of facts brought to this case by this newly discovered evidence is a *different* state of facts.

[fol. 280] These facts are not only *new* and *different* facts. These facts have not only probative value; but these facts have probative force. These *new* and *different* facts have the quality of proof. These *new* and *different* facts instantly proved to the minds and consciences of ten of the jurors (on the first trial of this case) that plaintiff-in-error was not guilty and each of these ten jurors swore that on a new trial of this case, using this newly discovered evidence, they would find plaintiff-in-error not guilty.

"Rather than merely attacking the credibility of the witness." Plaintiff-in-error respectfully submits that this court has overlooked the fact that plaintiff-in-error does not attack the character or the credibility of the State's witnesses. The part of this newly discovered evidence,

that is material to this case, is the *new and different* fact that the plaintiff-in-error never left the first room. Plaintiff-in-error is not attacking the character or credibility of any witness. Nowhere in his motion for a new trial on this newly discovered evidence does plaintiff-in-error attack the character or credibility of any witness.

Evidence, judgments, decrees, verdicts, notes, (as well as the character and credibility of a witness), may all be impeached.

"A distinction is to be drawn between evidence which impeaches a witness, in the sense that it affects the witness' credibility, and evidence which has probative force, in that it shows a state of facts different from that to which the witness testified." *Burke vs. The State*, 205 [fol. 281] Georgia 656, 658, 659.

"In which latter case its value is within the exclusive determination of the jury."

That is true. But this court has overlooked the fact that no jury has ever had the opportunity of determining the value of this newly discovered evidence. Ten members of the original trial jury say that this newly discovered evidence will result in a different verdict on a new trial of this case.

"We know of no better way to show such value than by the affidavits of the ten jurors that they would have voted for a verdict of not guilty had this evidence been presented to them." Plaintiff-in-error respectfully submits that this court has overlooked the fact that, throughout its opinion, this court has ignored the only material, the controlling fact, in each of these affidavits of these ten jurors. The controlling fact in the affidavits of each of these ten jurors is: *That, on a new trial of this case using this newly discovered evidence, they would give a different verdict—not guilty.*

That fact that a jury on a new trial of this case using this newly discovered evidence, would give a different verdict; is the controlling fact in this case. The fact that a jury on a new trial of a case using the newly discovered evidence, would give a different verdict, has been held the controlling fact, the ultimate criterion, the final test, in everyone of the about three hundred similar cases that

have come before the Appellate Courts of Georgia, except in this case at bar.

"This was matter for the consideration of the trial [fol. 282] court, in whose discretion the grant or refusal of an extraordinary motion for a new trial largely rests."

"*Largely rests*" is true. But plaintiff-in-error respectfully submits that this court has overlooked the fact that in every one of the three hundred similar cases that have been reversed by the Appellate Courts of Georgia because the plaintiff-in-error had newly discovered evidence that would result in a different verdict; the trial court had exactly the same discretion that the trial court had in this case at bar—no more discretion, no less discretion. The Appellate Courts of Georgia reversed the other three hundred similar cases.

"The Court of Appeals, however, is a court for correction of errors of law only and is vested with no such discretion." Plaintiff-in-error respectfully submits that this court has overlooked the fact that it has the same discretion in this case that it had in the almost two hundred cases (leaving out the Supreme Court cases) in which this Court of Appeals of Georgia reversed the trial court because the newly discovered evidence would result in a different verdict on a new trial of the case. This court has identically the same authority in this case that it had in the other two hundred similar cases that it has already reversed.

"It can pass only upon the question of whether the action of the trial court in overruling the extra-ordinary motion for a new trial was error as a matter of law."

Plaintiff-in-error respectfully submits that this court has overlooked the fact that in *every one* of the two hundred similar cases, turning upon the point that the newly discovered evidence would result in a different verdict, [fol. 283] this court has held that the action of a trial judge in overruling a motion for a new trial on newly discovered evidence when that newly discovered evidence would result in a different verdict, is error as a matter of law. This court has reversed the judgment of the trial court and ordered a new trial in each of the two hundred other similar cases turning on identically this same point.

Plaintiff-in-error respectfully calls to the attention of this court that in this court's statement of facts in this opinion (typewritten opinion, page 2, ending with line 29); this court has completely left off the only material and the controlling fact about the affidavits of the ten jurors—the fact that each of these ten jurors swore that on a new trial of this case, using this newly discovered evidence, they would give a verdict of not guilty.

All of the balance of the affidavits of these ten jurors was, in effect, surplusage insofar as facts material to this case are concerned. This is the only fact in the affidavits of the ten jurors that is material to this case. Plaintiff-in-error respectfully submits that the statement of this case by this court, leaving out the fact that the ten jurors each swore that on a new trial of this case using this newly discovered evidence, they would give a different verdict; does not give a fair statement of the facts in this case.

(Paragraph 2, page 3, typewritten opinion)

“Under Code Sec. 38-1803, one method of impeaching a witness is by proving contradictory statements previously made by her as to matters relevant to her testimony and to the case.”

[fol. 284] Plaintiff-in-error respectfully submits that this court has overlooked the fact that plaintiff-in-error has not anywhere in his motion for new trial attempted to impeach the character or credibility of anyone.

“It is thus evident that the newly discovered evidence is no more than impeaching in character, for which reason it falls under the inhibition of Code Sec. 70-204, though in every other respect it meets the requirements of this Code Sec. dealing with circumstances under which a new trial may be granted on the ground of newly discovered evidence.”

Here, this court holds that if this newly discovered evidence is anything more than impeaching of the character and credibility of the witness, then it is good for a new trial; but this court makes the statement that this newly discovered evidence is no more than impeaching of the character and credibility of the witness, and is not good for a new trial. This court here holds, in different words,

that if this newly discovered evidence is more than impeaching of the character and credibility of a witness, then it is good for a new trial.

Plaintiff-in-error has already dealt with this point (whether the newly discovered evidence brings more to this case than evidence that merely impeaches the character and credibility of a witness) and plaintiff-in-error respectfully submits that this newly discovered evidence brings to this case a *new* and *different* state of facts that shows plaintiff-in-error's innocence of this charge and that, on a new trial of this case using this newly discovered evidence, plaintiff-in-error will be found not guilty; and that the ends of justice require that a new trial be granted [fol. 285] this plaintiff-in-error by this court.

Plaintiff-in-error respectfully submits that this court has overlooked the unusual factors, as shown by the Record, present in this case: The State went into the trial of this case with unclean hands, the matter of plaintiff-in-error's eighth loaded cartridge has all the time been known by the State; the un-scionable putting into this case of evidence known at the time to be perjury, the unusual circumstances surrounding the surrender to plaintiff-in-error of the newly discovered evidence (dying declaration), the refusal of the State to comply with plaintiff-in-error's request to have his pistol, in the hands of the State, tested in order to show that the testimony that he used knucks, was perjury. These unusual factors, all in the Record of the case, would show to an Appellate Court, that even if plaintiff-in-error did not have full legal grounds for a new trial, the ends of justice would still require that a new trial be granted in this case.

The placing in this case, by the State, of evidence known to be perjury, seeks to deprive plaintiff-in-error of liberty without due process of law, in violation of Sec. 2-103 of the Constitution of Georgia and in violation of the 14th Amendment to the Constitution of the United States.

The Supreme Court of Georgia has held in *Burke vs. The State* 205 Georgia 656, that the fact that the laws of Georgia grant an appellant in such matters—in which perjured testimony was knowingly used against him, a

remedy for relief; removes such matters from violation of the due process clause of the Constitution of Georgia and from violation of the 14th Amendment of the Constitution of the United States.

However, plaintiff-in-error respectfully submits that the remedy set up in the above mentioned decision of the Supreme Court of Georgia is not an adequate remedy, unless this decision should be amended so that it will hold up the proceedings against appellant until he shall have had sufficient time for compliance with the requirements set up by the Code of Georgia and listed in above decision.

Plaintiff-in-error respectfully requests that this Court of Appeals bring above matter to the attention of the Supreme Court of Georgia and request them to amend, as indicated above, their decision in above stated case.

Plaintiff-in-error respectfully requests that he be allowed to file a brief and argument with the Supreme Court of Georgia before their final decision in above stated case.

The fact that while the State has done a world of talking on this motion for a new trial, it has presented absolutely no evidence as a counter-showing; would require a new trial. This motion for a new trial was an issue before the court in which both sides had notice and in which both sides were represented; and no counter-showing was made—the affidavit of J. E. Jones dated the 24th day of January, 1951 and the reports of the F. B. I. brought to this case absolutely no issue on a material fact. There was no situation before the trial court that permitted any exercise of any discretion by the trial judge.

[fol. 287] Plaintiff-in-error respectfully submits that after all the main question to be passed on by this court is plaintiff-in-error's motion for new trial on newly discovered evidence.

Plaintiff-in-error respectfully submits that he has brought to this court a *new* and *different* state of facts and newly discovered evidence that will result in a different verdict upon a new trial of this case; that he has met all of the technical requirements of law in such matters; and plaintiff-in-error respectfully requests that this court grant a

rehearing in this case, and reverse the judgment of the trial court, and grant to plaintiff-in-error a new trial.

This 14th day of June, 1951.

Marion W. Stenbridge, Plaintiff In Error, Pro se.

P. O. Address: Milledgeville, Georgia.

Georgia, Baldwin County

Personally appeared before me Marion W. Stenbridge who, being duly sworn, states that he has this day served C. S. Baldwin, Jr., Solicitor General, Ocmulgee Circuit Superior Court, with a copy of the within and foregoing motion for rehearing, by mailing said copy to him at his most notorious place of abode at Milledgeville, Georgia.

Marion W. Stenbridge.

[fol. 288] Sworn to and subscribed before me this the 14th day of June, 1951. M. H. Ussery, Notary Public, Baldwin County, Georgia.

[Title omitted].

CERTIFICATE OF COUNSEL

I hereby certify that I am acting as my own counsel in above stated case and that after careful examination of the opinion of June 5, 1951 of this court; I am of the opinion that this court has overlooked material facts, including the fact that the evidence offered in the newly discovered evidence is *new* and *different* evidence and including the fact that each of the ten jurors in their affidavits swore that upon a new trial of this case using the newly discovered evidence they would give a different verdict—not guilty; and that this court has misapplied the decisions in all cases, turning upon the point that newly discovered evidence that will produce a different result is grounds for a new trial, already decided by both the Supreme Court of Georgia and the Court of Appeals of Georgia and particularly *McDaniel et al. v. State*, 74 Ga. [fol. 289] App. 5; *Harper v. State*, 50 Ga. App. 298; *Todd*

v. Jackson, 24 Ga. App. 519; Carson v. State, 20 Ga. App. 82; Paden v. State, 17 Ga. App. 112; Nolan v. State, 14 Ga. App. 824; Deason v. State, 11 Ga. App. 759; Fehn v. State, 11 Ga. App. 328; Moore v. State, 11 Ga. App. 259; and most particularly the following decision

"the alleged newly discovered testimony, which was not simply impeaching or cumulative, would probably have resulted in a different verdict. For this reason, the refusal of the lower court to grant a new trial on the ground of newly discovered evidence was erroneous." Judgment reversed. Deason vs. The State. 11 Ga. App. 759.

I verily believe that the facts overlooked and the misapplying of the above decisions would require a different judgment from that rendered by this court on June 5, 1951.

Marion W. Stenbridge, Plaintiff In Error, Pro se.

[File endorsement omitted.]

[fol. 290] IN THE COURT OF APPEALS OF THE STATE
OF GEORGIA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—July 17, 1951

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 291] IN THE COURT OF APPEALS OF GEORGIA

[Title omitted]

NOTICE OF INTENTION TO FILE CERTIORARI—Filed July 20,
1951

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that it is the intention of Plaintiff-in-error to apply to the Supreme Court of Georgia for the writ of certiorari to review the judgment of the

Court of Appeals rendered and filed in the case above stated on June 5, 1951, and in which case a motion for rehearing was denied on July 17, 1951.

This the 19th day of July, 1951.

Marion W. Stembridge, Plaintiff-in-error, Pro se.

[File endorsement omitted.]

[fol. 291-A] IN THE SUPREME COURT OF GEORGIA

[Title omitted]

APPLICATION FOR CERTIORARI—Filed Aug. 16, 1951

To the Supreme Court of Georgia:

Now comes Marion W. Stembridge and files this his application for certiorari in the above stated case and for grounds thereof says: — — — — —

1. The original decision and judgment of the Court of Appeals in the case of Marion W. Stembridge, plaintiff in error, against the State of Georgia, defendant in error, the same being case No. 33,573 in the Court of Appeals, was rendered and filed on June 5, 1951. Said judgment affirmed the judgment of the trial court, that court having overruled the extraordinary motion for new trial on newly discovered evidence, that had been filed by Marion W. Stembridge, applicant for certiorari.

Subsequently, and within ten days from the rendition of said judgment, applicant for certiorari filed his motion for rehearing, which was denied on July 17, 1951. In denying the motion for rehearing the Court of Appeals made no changes in its original opinion dated June 5, 1951.

2. Within ten days after the filing of the order of the Court of Appeals overruling applicant's motion for rehearing, applicant gave written notice to the clerk of the Court of Appeals of his intention to apply to the Supreme Court of Georgia for a writ of certiorari in said case. The copy of said notice is attached hereto and made a part hereof.

3. This application is filed with the Clerk of this court within thirty days from the filing of said judgment in the [fol. 291-B]. Court of Appeals of Georgia in said case.

4. A certified copy (the one copy sent up by the clerk of the Court of Appeals is certified. For the convenience of each individual Justice of this Court, applicant has sent along an uncertified copy of the record, except transcript of evidence in the first trial, attached to a copy of the application for certiorari) of the entire record in said case in the Court of Appeals of Georgia including a copy of the judgment and decision sought to be reviewed, is attached hereto as Exhibit "A."

5. This case is one wherein applicant filed in the trial court an extraordinary motion for new trial on newly discovered evidence. The newly discovered evidence was a dying declaration given by the State's main witness who did not die but who recovered and testified against applicant in the original trial of the case; and on whose testimony applicant has been convicted of voluntary manslaughter. This dying declaration was not, and could not have been, obtained by applicant until more than a year after the trial.

There were two questions presented in the trial court, in the Court of Appeals, and now presented in this court.

1. Should an extraordinary motion for new trial on newly discovered evidence, which meets all of the qualifying technical requirements as to time, diligence, witnesses, etc., and which extraordinary motion shows on its face positively, categorically, and mathematically that the newly discovered evidence would have produced a different result if this newly discovered evidence had been available on the first trial of the case; be granted?

2. Should an extraordinary motion for new trial on newly discovered evidence, otherwise good, be granted if the uncontested evidence on the motion before the trial court shows that the newly discovered evidence would give a different result on a new trial of the case?

6. A summary statement of the case is as follows:
[fol. 291-C] Applicant owns and operates Stembidge Banking Company, a private bank. He also owns and operates Stembidge and Company, Incorporated, a whole-

sale dry goods firm which owns and operates a retail general store in Milledgeville, Georgia.

On June 18, 1948, applicant loaned to Richard Lee Cooper, to his brother Johnnie Cooper, and to their mother, Mary Jane Harrison, \$850. in cash, with which to buy an automobile from a local automobile dealer. The automobile note, including some delinquent balances owed to Stenbridge and Company by borrowers, was to be paid in twelve monthly payments.

Borrowers very soon began dragging on their payments on the automobile notes. On March 7, 1949, the automobile payments were more than six months delinquent and applicant, with an eye to getting payments started so that he might reopen the accounts of borrowers at the retail store of Stenbridge and Company, went to the home of Johnnie Cooper who had been out of work and who had just got another job. Johnnie Cooper and his family and Mary Jane Harrison and her family live in adjoining apartments in the same house. Applicant carried with him S. L. Terry, who was a bookkeeper and collector for Stenbridge Banking Company and who was also County Coroner.

After reaching Johnnie Cooper's house and while applicant was quietly and peacefully and in a completely friendly manner discussing with Johnnie Cooper his delinquent payments on the note, applicant found himself violently assaulted by Mary Jane Harrison and Emma Johnnekins who had been in the rear of Mary Jane Harrison's apartment and who came up behind applicant and with whom applicant was having no discussion whatever. In order to prevent Mary Jane Harrison and Emma Johnnekins from killing him, and after putting it off until the last possible fraction of a second, it was necessary for applicant to shoot Mary Jane Harrison and Emma Johnnekins. Four days later Emma Johnnekins died. All of the assault took place in the first room of the apartment and applicant [fol. 291-D] never went into any room of the apartment except the first room.

Applicant was tried for the murder of Emma Johnnekins, and on the trial Mary Jane Harrison testified that applicant had followed Emma Johnnekins back into the third

room of the apartment and cold-bloodedly shot her while she was sitting on a trunk; and it was on this testimony of Mary Jane Harrison that applicant had followed Emma Johnnekins back into the third room and shot her while she was sitting on a trunk; that applicant was convicted of voluntary manslaughter. After two days of a long hot July trial and two days more of a deadlocked jury, and after an additional coercive recharge that a mistrial was a serious thing by the trial judge on his own motion, the jury, in a compromise verdict, found applicant guilty of voluntary manslaughter.

The Coroner of the County was present at the house at the time of the assault but he was on the front porch trying to keep Johnnie Cooper from coming into the first room in which the assault against applicant was taking place, and the coroner could not swear positively that applicant had never left the first room and applicant had no witness who could swear that applicant had never left the first room of the apartment.

A motion for new trial based on errors during the trial of the case, but not including the coercive recharge of the trial judge, which charge has since been declared reversible error in *Campbell vs. State*, 81 Ga. App. 834, was turned down.

Applicant and his attorneys learned during the trial of the case that Mary Jane Harrison had given the dying declaration (the State put in the dying declaration of Emma Johnnekins) and that this dying declaration of Mary Jane Harrison was in the State's file, and applicant's attorneys attempted to get this dying declaration but the State refused to surrender it.

During the trial of the case it was testified by State's witnesses that there was a bullet hole in the wall of the third room of the apartment and the State charged that applicant had shot this bullet.

[fol. 291-E] Within thirty minutes of the shooting applicant turned over to the police his pistol and eight loaded cartridges more than twenty-five years old and thus easily identified. The State refused to have the bullet taken out of the third room or to go any further into the third room matter. Knowing that he did not shoot the bullet into the

wall of the third room, applicant and his attorneys began a determined and relentless pressure for permission to inspect applicant's pistol and the *eight* twenty-five year old cartridges that applicant had surrendered with the pistol to the police. The State could produce only *seven* of applicant's *eight* loaded cartridges and could give no reasonable reason for not producing applicant's eighth loaded cartridge and they contended that applicant had surrendered only *seven* loaded cartridges. Before applicant's attorneys could file formal demand for this eighth loaded cartridge, they were asked if they would not like to have this dying declaration of Mary Jane Harrison, which applicant's attorneys had not mentioned since the trial and which they felt was forever unavailable to them.

At two separate places in this dying declaration, Mary Jane Harrison states categorically that applicant never left the first room.

Applicant filed an extraordinary motion for new trial on this newly discovered evidence in the trial court showing that he had, since the original verdict in his case, discovered evidence that would show his innocence of the charge of voluntary manslaughter, on which he had originally been convicted. He showed that this newly discovered evidence was a dying declaration given by the State's main witness, who recovered and testified at the trial and on whose testimony applicant was convicted.

Attached to the extraordinary motion for new trial were the sworn statements of ten of the jurors on the original trial of the case in which statement each juror swore:

1. That if this evidence had been before him on the first trial, he would never have found applicant guilty.
- [fol. 291-F] 2. That on a new trial of this case, using this newly discovered evidence, he would never find applicant guilty.

Attached to the motion for new trial were all necessary qualifying affidavits as to time of discovery, diligence, character of witnesses, etc., and the Court of Appeals has held that all requirements in this field have been met. By order of the trial judge all evidence on the hearing on the extraordinary motion for new trial was to be by affidavit only.

Upon the hearing on this extraordinary motion for new trial on this newly discovered evidence, the State offered no evidence whatever:

1. That if this newly discovered evidence had been available on the *first* trial on the case, the jury would *not* have given a different result (verdict).

2. That a jury on a *new* trial of this case using this newly discovered evidence, would *not* give a different result.

3. To disprove or counter or challenge in any manner the statements in the affidavits of the ten jurors.

In fact, the State offered no evidence whatever that was material to this case.

The trial judge overruled applicant's motion for new trial and applicant brought the case to the Court of Appeals.

[fol. 291-G]

ASSIGNMENTS OF ERROR

A. The affidavits of the ten jurors show unequivocally that if this newly discovered evidence had been before them on the first trial of the case, they would have given a different verdict—not guilty.

In affirming the judge of the trial court, the Court of Appeals has, in effect, held that a motion for new trial on newly discovered evidence, that showed positively, absolutely, and mathematically, that it would have resulted in a different verdict, and which motion meets all of the other requirements of law; is not good for new trial. In doing this, the Court of Appeals is refusing to be bound by all precedent decisions of the Supreme Court in every case, without exception, that ever turned on this point.

Error is assigned thereon as being in violation of Sec. 2-3708 of the Constitution of the State of Georgia.

This judgment and decision of the Court of Appeals in this case in failing and refusing to decide applicant's case in accordance with Sec. 2-3708 of the Constitution of Georgia also violates Article 1, Sec. 1, Par. 3 of the Constitution of Georgia (Code § 2-103) and the Fourteenth Amendment to the Constitution of the United States (Code § 1-815);

both of which sections provide that no person shall be deprived of his liberty without due process of law; and article 1, sec. 1, par. 2 of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States (Code § 1-815), guaranteeing to all persons equal protection of the law.

B. The affidavits of the ten jurors show unequivocally that on a new trial of this case using the newly discovered evidence, they would give a different result (verdict). The statement of facts in this case set up by the Court of Appeals evades and ignores this part (Par. 6 of each of the jurors' affidavits). There was absolutely no evidence whatever that these affidavits of these ten jurors did not speak the truth.

In affirming the judgment of the trial court the Court of Appeals has, in effect, held that extraordinary motion for [fol. 291-H] new trial, otherwise good, and that shows that on a new trial of the case using the newly discovered evidence, a different result from the verdict on the first trial of the case would be produced; is not good for new trial. In other words, the Court of Appeals has held that the ultimate criterion or test on newly discovered evidence is *not different result on a new trial of the case.*

Applicant assigns error on this in that it is a refusal of the Court of Appeals to follow the controlling decisions of the Supreme Court on this point. Applicant assigns error further on the above judgment and decision of the Court of Appeals in that this judgment and decision violates sec. 2-3708 of the Constitution of the State of Georgia.

This judgment and decision of the Court of Appeals in this case in failing and refusing to decide applicant's case in accordance with Sec. 2-3708 of the Constitution of Georgia also violates article 1, sec. 1, par. 3 of the Constitution of Georgia (Code § 2-103) and the Fourteenth Amendment to the Constitution of the United States (Code Sec. 1-815), both of which sections provide that no person shall be deprived of his liberty without due process of law; and article 1, sec. 1, par. 2, of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States (Code § 1-815), guaranteeing to all persons equal protection of the law.

C. The Court of Appeals has in its opinion set up a statement of facts that is, in effect, a misrepresentation of the material facts of this case. The Court of Appeals has left out of its statement of facts not only the material fact, but one of the controlling facts, that each of the ten jurors in his sworn statement swore that on a new trial of this case using the newly discovered evidence, he would give a different verdict.

The Court of Appeals has set up this misrepresentative statement of facts and then proceeded to decide the case on [fol. 291-I] its misrepresentative statement of facts so set up.

Applicant assigns this as grave error. In setting up a state of facts in applicant's case, that does not show the correct material facts in his case, and in then deciding applicant's case on the incorrect statement of facts so set up; the Court of Appeals has violated article 1, sec. 1, par. 3 of the Constitution of Georgia (Code § 2-103) and the Fourteenth Amendment to the Constitution of the United States (Code § 1-815) both of which sections provide that no person shall be deprived of his liberty without due process of law; and article 1, sec. 1, par. 2, of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States (Code § 1-815), guaranteeing to all persons equal protection of law.

D. The Court of Appeals in its opinion held "it has been frequently held that the ultimate criterion by which the merit of newly discovered evidence should be measured is the probability of a different result. (A number of cases are cited). These cases must be distinguished from the one at bar because the newly discovered evidence was of a character whose probative value might be assessed by the courts in that it proved a new and different state of facts."

Error is assigned on said holding of the court because a word by word check of the record shows that this newly discovered evidence is both new evidence and different evidence.

E. "Rather than merely attacking the credibility of the witness."

Here the Court holds that the newly discovered evidence merely attacks the credibility of the witness and went no further.

Applicant assigns error on this as the affidavit of each of the ten jurors shows that if they had had this newly discovered evidence they would have given a different result on the first trial, and that using this newly discovered evidence they would give a different result on a new trial.

F. "In which latter case its value is within the exclusive [fol. 291-J] determination of the jury."

Here the Court of Appeals holds, by implication, that a jury has already passed on this newly discovered evidence.

Applicant assigns error because no jury has ever passed on this newly discovered evidence.

G. "We know of no better way to show its value than by the affidavits of the ten jurors that they would have voted for a verdict of not guilty had this evidence been presented to them."

Here the Court of Appeals holds that the newly discovered evidence would have resulted in a different verdict on the first trial of the case; but they refused to follow the controlling precedent decisions of the Supreme Court and the Court of Appeals in such a state of facts.

Error is assigned on the above and for the reasons stated above.

H. "This was matter for the consideration of the trial court, in whose discretion the grant or refusal of an extraordinary motion for a new trial largely rests."

Here the Court of Appeals holds, in effect, that the judge of the trial court had the discretion to overrule an unbroken line of more than three hundred cases in the Supreme Court and the Court of Appeals in which decisions the rule of law that newly discovered evidence, otherwise good, that showed different result on first trial, or different result on new trial, was good for new trial.

Error is assigned on above holding for the reason that a trial judge has no such discretion.

I. "The Court of Appeals, however, is a court for correction of errors of law only and is vested with no such discretion."

Here the Court of Appeals holds that the action of the trial judge in improperly overruling the motion for new trial is not error as a matter of law, and that the Court of Appeals has no authority to reverse a trial judge in such circumstances.

[fol. 291-K] Error is assigned on this because it is in violation of all Code Sections relating thereto and is in violation of all decisions of the Supreme Court and Court of Appeals relating thereto.

J. "It can pass only upon the question of whether the action of the trial court in overruling the extraordinary motion for new trial was error as a matter of law."

Here the court holds by implication that the action of the trial judge, in improperly overruling a motion for new trial, is not error as a matter of law.

Error is assigned on this holding of the Court of Appeals for the reason that all Code Sections relating thereto, and all decisions of the Supreme Court relating thereto, and all decisions of the Court of Appeals relating thereto; hold that the improper overruling of a motion for new trial by trial judge, is error as a matter of law.

K. "Under Code § 38-1803 one method of impeaching a witness is by proving contradictory statements previously made by her as to matters relevant to her testimony and to the case. It is thus evident that the newly discovered evidence is no more than impeaching in character, for which reason it falls under the inhibition of Code § 70-204, though in every other respect it meets the requirements of this Code section dealing with circumstances under which a new trial may be granted on the ground of newly discovered evidence."

Here the Court of Appeals holds that this newly discovered evidence meets every requirement of the Code section dealing with the granting of new trial on newly discovered evidence, except for the fact that the newly discovered evidence in this case is no more than impeaching in its character.

Error is assigned on this holding of the Court of Appeals for the reason that this evidence goes further than merely impeaching the character of the witness. 9

L. The Court of Appeals has failed to note or rule upon applicant's claim that due process of law was violated in putting in testimony, known at the time to be perjury, [fol. 291-L] against him.

Applicant assigns error on this failure because the evidence shows that while putting in this perjured and framed testimony of Mary Jane Harrison that applicant followed Emma Johnnekins into the third room and shot her while she was sitting on a trunk, the State all the time had in its files the dying declaration of Mary Jane Harrison in which Mary Jane Harrison in two separate places stated that applicant never left the first room of the apartment.

M. Error is specifically assigned on the entire decision and opinion of the Court of Appeals for the reason that the same is contrary to law and contrary to previous decisions of the Supreme Court and the Court of Appeals in that:

1. The Court of Appeals refuses to apply the law and all decisions previously laid down by the Supreme Court and the Court of Appeals, that extraordinary motion for new trial on newly discovered evidence, otherwise good, would be granted if the newly discovered evidence would have on the first trial resulted in a different verdict, or if the newly discovered evidence probably would, on a new trial, result in a different verdict.

2. The Court of Appeals sets up in its opinion a state of facts which, in truth, is a misrepresentative statement of the material facts in this case, and based its opinion on this misrepresentative statement of facts so set up.

3. The Court of Appeals failed to apply the controlling decisions of the Supreme Court and of the Court of Appeals to the facts in the instant case.

[fol. 291-M] REASONS FOR GRANTING CERTIORARI

1. The questions involved in this application for certiorari are of general importance and of great public concern and gravity.

2. If the Court of Appeals, in a criminal case, may disregard the controlling decisions of the Supreme Court, and may do this on a statement of facts that, in truth, misrepresents the material facts of the case; then liberty and justice in Georgia would be dead and chaos would be the inevitable result.

3. If the Court of Appeals in a criminal case may withhold one's rights under the Constitution by writing a statement of facts that is not a correct statement of the material facts of the case and then decide the case on the basis of their misrepresentative statement of facts; then liberty and justice in Georgia would be dead.

Applicant made a motion for rehearing in the Court of Appeals and on the 17th day of July, 1951, applicant was informed that his motion for rehearing was denied and that the opinion had not been changed. Said motion for rehearing embraced the same contentions as are made in the application for certiorari and such contentions were disposed of by that Court adversely to applicant.

Wherefore, applicant prays that a writ of certiorari be granted and that the judgment and decision of the Court of Appeals in this case be reviewed and that judgment and decision of the Court of Appeals be reversed.

Marion W. Stembridge, Applicant for Certiorari,
Pro se.

Home Address: Milledgeville, Georgia.

[fol. 291-N] CERTIFICATE BY COUNSEL UNDER RULE NO. 51

I, Marion W. Stembridge, applicant for the Writ of Certiorari in this case, do hereby certify that I am acting as my own counsel in this case, and that I do verily believe that this case is one which is contemplated by the rules of

this court pertaining to certiorari, that it does not fall within the class of those prohibited by the rules of this court and that I do verily believe that the Writ of Certiorari should be granted under said rules in the present case.

Marion W. Stembridge, Applicant for Certiorari.

[fol. 291-O].. [File endorsement omitted.]

[fol. 291-P] IN THE SUPREME COURT OF GEORGIA

[Title omitted]

NOTICE OF DATE OF FILING PETITION FOR CERTIORARI—Filed
Aug. 20, 1951

To Honorable C. S. Baldwin, Jr., Counsel for State of Georgia, respondent in certiorari in the above-stated case:

You are hereby notified that a petition for certiorari to review the decision of the Court of Appeals of Georgia in the case of Marion W. Stembridge vs. State of Georgia, No. 33573—Court of Appeals, was filed with the Clerk of the Supreme Court of Georgia on the 16 day of August, 1951. A copy of said petition and briefs in support of same are attached hereto and served herewith upon you.

This 16 day of August, 1951.

Marion W. Stembridge, Applicant for Certiorari,
Pro Se.

ACKNOWLEDGMENT OF SERVICE

Service of notice of the date of filing the petition for certiorari of Marion W. Stembridge in the above-stated case, together with a copy of his petition for certiorari and his brief in support of same is hereby acknowledged, copy received, and all other and further service hereby waived.

This 18 day of Aug., 1951.

C. S. Baldwin, Jr., Attorney for Respondent in
Certiorari.

[File endorsement omitted.]

[fol. 291-Q] IN THE SUPREME COURT OF GEORGIA

[Title omitted]

ORDER DENYING CERTIORARI—Sept. 12, 1951

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur except Head and Almand, JJ., not participating.

[fol. 291-R] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 292] SUPREME COURT OF THE STATE OF GEORGIA

NOTICE OF DENIAL OF CERTIORARI—Aug. 16, 1951

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day an application to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of Marion W. Stembridge v. The State.

K. C. Bleckley, Clerk Supreme Court of Georgia.

[File endorsement omitted.]

[fol. 293] SUPREME COURT OF GEORGIA

[Title omitted]

REMITTITUR

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur except Head and Almand, JJ., not participating.

Bill of costs, \$15.00.

15-8112

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

September 24, 1951

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Marion W. Stembridge paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[SEAL]

K. C. Bleckley, Clerk.

COURT OF APPEALS OF GEORGIA

Case No. 33573

REMITTITUR FROM SUPREME COURT

Filed in office September 25, 1951.

Morgan Thomas, Deputy Clerk Court of Appeals of Georgia.

[fol. 294] IN THE COURT OF APPEALS OF GEORGIA

[Title omitted]

APPLICATION FOR STAY OF REMITTITUR—Filed Sept. 15, 1951

To the Court of Appeals of Georgia:

The Supreme Court of Georgia having denied the application of plaintiff-in-error for certiorari in the above stated case, you are hereby notified that it is the intention of plaintiff-in-error to apply to the Supreme Court of the United States for the writ of certiorari to review the judgment of the Supreme Court of Georgia and of the Court of Appeals; and the Court of Appeals of Georgia is requested to hold the remittitur in the above stated case for a period of ninety days from the date on which the Supreme Court of Georgia will forward its remittitur to the Court of Appeals of Georgia, and until the Supreme

Court of the United States passes upon above mentioned application for certiorari.

Marion W. Stembridge, Plaintiff-in-error, Pro se.

Home Address: Milledgeville, Georgia.

Filed in office Sep. 15, 1951.

Morgan Thomas, D. C. C. A. Ga.

Stay of 90 days granted by Court Sept. 17, 1951.

W. G. England, Clerk.

[fol. 295] IN THE COURT OF APPEALS OF THE STATE
OF GEORGIA

[Title omitted]

ORDER STAYING REMITTITUR—Sept. 17, 1951

Upon consideration of the motion of counsel for plaintiff in error, it is ordered that the remittitur in said case be stayed for 90 days from date remittitur from Supreme Court of Georgia is received for the purpose of filing his appeal in the Supreme Court of the United States.

[fol. 296] IN THE COURT OF APPEALS OF GEORGIA

[Title omitted]

MOTION TO AMEND RECORD—Filed Oct. 22, 1951

Now comes plaintiff in error in the above styled case after his motion for rehearing has been denied, in which motion he presented to this court the following Federal Question:

“The placing in this case, by the State, of evidence known to be prejury, seeks to deprive plaintiff-in-error of liberty without due process of law, in violation of Sec. 2-103 of the Constitution of Georgia and in violation of the 14th Amendment to the Constitution of the United States.”

This court considered the Constitutional question thus raised, and decided it against the contentions of plaintiff in error and in so doing, necessarily determined that the undisputed acts of the Solicitor-General which acts are shown to have resulted in the conviction of plaintiff in error, (said acts being the introduction of evidence known by him to be perjured and his concealing of evidence which would have resulted in plaintiff-in-error's acquittal,) did not deny plaintiff in error the due process of law and the equal protection of the law as guaranteed by the Constitution of the United States; and further said court necessarily decided that the portion of section 110-706 of the Code of Georgia requiring that before a conviction knowingly procured by perjured testimony will be set aside, the witness must be first convicted of perjury, is not unconstitutional as denying plaintiff in error his rights of due process and the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States, and that the construction of said code section as placed thereon by the Supreme Court of Georgia in the case of *Burke v. State of Georgia* 205 Ga. 656 does not have the effect of denying plaintiff in error said constitutional rights. However, no opinion was written by the court on the motion for rehearing and the record fails to set forth whether or not the court determined this question.

Plaintiff in error prays that this court amend the record so that it will show whether this Constitutional question was determined and, if so, what its determination was on said Federal Question.

Marion W. Stembridge, Pro Se.

Home Address: Milledgeville, Georgia.

ACKNOWLEDGMENT OF SERVICE

Service of the within motion is hereby acknowledged, copy received, and all other and further service hereby waived.

This the 20 day of Oct., 1951.

C. S. Baldwin, Jr., Attorney for Respondent in
Certiorari.

[fol. 299] IN THE COURT OF APPEALS OF THE STATE
OF GEORGIA

ORDER AMENDING RECORD—Oct. 22, 1951

The Honorable Court of Appeals met pursuant to adjournment, The following order was passed:

M. W. STEMBRIDGE v. THE STATE

On motion of the plaintiff in error praying that the court amend the record and judgment in this cause so as to show its action and decision on the Federal question raised in the motion for rehearing, this court is of the opinion that the prayers of the plaintiff in error should be granted. It is therefore ordered that the record in said cause be amended as follows:

In the consideration by this court of the rehearing which raised the Federal question that "the placing in this case, by the State, of evidence known to be perjured seeks to deprive plaintiff in error of liberty without due process of law in violation of Section 2-103 of the Constitution of Georgia and in violation of the 14th Amendment to the Constitution of the United States", this court considered the constitutional question thus raised and decided it against the contentions of the plaintiff in error. In so doing this court considered Sec. 110-706 of the Code of Georgia of 1933 which provides as follows:

"Any judgment, verdict, rule or order of court, which may have been obtained or entered up, shall be set aside and be of no effect, if it shall appear that the same was entered up in consequence of corrupt and wilful perjury; and it shall be the duty of the court in which such verdict, judgment, rule or order was obtained or entered up to cause the same to be set aside upon motion and notice to the adverse party; but it shall not be lawful for the said court to do so, unless the person charged with such perjury shall have been thereof duly convicted, and unless it shall appear to the said court that the said verdict, judgment, rule or order could not have been obtained and entered up [fol. 300] without the evidence of such perjured per-

son, saving always to third persons innocent of such perjury the rights which they may lawfully have acquired under such verdict, judgment, rule, or order before the same shall have been actually vacated and set aside;"

and *Burke v. State*, 205 Ga. 656, et seq. which is a decision of the Supreme Court of this State and is therefore binding on this Court, and in which the Constitutional question raised by the plaintiff in error was decided adversely to his contentions. The decision of this Court on the rehearing in question being adverse to the plaintiff in error necessarily brought into consideration the question of whether the rights of the plaintiff in error as guaranteed to him under the 14th Amendment to the Constitution of the United States had been violated, and such decision necessarily determined that such rights had not been so violated. The decision by this court denying the rehearing necessarily determined that the action of the Solicitor General as shown by the record did not deprive the plaintiff in error of any rights guaranteed to him under the 14th Amendment of the Constitution of the United States; also the decision of this court necessarily applied the Fourteenth Amendment to the Constitution of the United States to Sec. 110-706 of the Code of Georgia of 1933 and decided that its application in this case did not amount to an abridgement of any of the rights of the plaintiff in error guaranteed to him under the 14th Amendment to the Constitution of the United States; and also that this Court necessarily considered *Burke v. State*, 205 Ga. 656, which is a decision of the Supreme Court of this State by which this Court is bound and which must be followed by this Court, the effect of which is to hold that it does not abridge any of the rights of the plaintiff in error guaranteed to him under the 14th [fol. 301-302] Amendment to the Constitution of the United States.

[fol. 303] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1951

No. 474

[Title omitted]

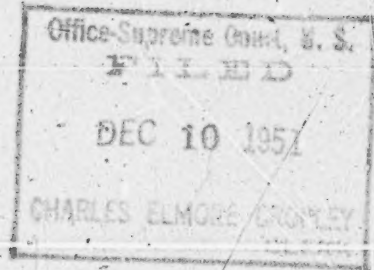
ORDER ALLOWING CERTIORARI—Filed March 3, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia and to the Court of Appeals of Georgia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(635)

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SUPREME COURT. U.S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF GEORGIA AND TO THE
SUPREME COURT OF GEORGIA**

MARION W. STEMBRIDGE,

Pro se.

INDEX

SUBJECT INDEX

	Page
Petition for writ of certiorari	1
Opinions below	1
Jurisdiction	2
Questions Presented	3
Statute involved	4
Statement	4
Discussion of Federal questions	6
Reasons for granting the writ	13
Conclusion	14

TABLE OF CASES CITED

<i>Carr v. State</i> , 106 Ga. 737	10
<i>Carson v. State</i> , 20 Ga. App. 82	10
<i>Cooper v. State</i> , 91 Ga. 363	10
<i>Deason v. State</i> , 11 Ga. App. 759	10
<i>Fehn v. State</i> , 11 Ga. App. 329	10
<i>Gregory v. Harrell</i> , 88 Ga. 170	10
<i>Harper v. State</i> , 50 Ga. App. 298	10
<i>Hill v. Texas</i> , 316 U. S. 400	8
<i>Long v. State</i> , 54 Ga. 564	10
<i>Mann v. State</i> , 34 Ga. 1	10
<i>McDaniel v. State</i> , 74 Ga. App. 5	10
<i>Mills v. May</i> , 42 Ga. 623	10
<i>Mooney v. Holohan</i> , 294 U. S. 103	8
<i>Moore v. State</i> , 11 Ga. App. 259	10
<i>Nolan v. State</i> , 14 Ga. App. 824	10
<i>Norris v. Ala.</i> , 294 U. S. 587	8
<i>Paden v. State</i> , 17 Ga. App. 113	10
<i>Pyle v. Kans.</i> , 317 U. S. 213	8
<i>Stephens v. State</i> , 99 Ga. 200	10
<i>Thompson v. State</i> , 60 Ga. 619	10
<i>Todd v. Jackson</i> , 24 Ga. App. 519	10
<i>Widener v. State</i> , 54 Ga. 312	10

STATUTES CITED

Sec. 1, 14th Amendment	13
Sec. 70-204, Code of Ga., 1933	9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF GEORGIA AND TO THE
SUPREME COURT OF GEORGIA**

Marion W. Stembridge, petitioner, prays that a writ of certiorari issue to review the judgments of the Court of Appeals of Georgia entered in the above case on July 17, 1951, and of the Supreme Court of Georgia, entered in the above case on September 12, 1951.

Opinions Below

The opinion of the Court of Appeals of Georgia is shown at R. 199-202.

The Supreme Court of Georgia wrote no opinion in denying certiorari (R. 225).

Jurisdiction

The judgment of the Supreme Court of Georgia was entered September 12, 1951 (R. 225).

The jurisdiction of this court is invoked under Title 28 U. S. C. Sec. 1257(3).

Federal Question 1 (R. 208) was first raised in the Court of Appeals of Georgia by allegation that the placing in this case of evidence known to be perjury, seeks to deprive petitioner of liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. This Federal Question was considered and decided adversely to petitioner.

Federal Question 2 (R. 217 par. 10 and R. 218 par. 4) was first raised before the Supreme Court of Georgia by alleging that the Court of Appeals of Georgia, in arbitrarily and improperly deciding petitioner's Bill of Exceptions in violation of every applicable law, statutory or decision, and different from the decision that had been rendered by this Court of Appeals to all others in like circumstances, had violated petitioner's rights under the equal protection of the laws clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States.

This Federal Question was decided adversely to petitioner. If petitioner's claim had been decided in petitioner's favor, it would have required that the Supreme Court of Georgia grant certiorari and reverse the judgment of the Court of Appeals.

Federal Question 3 (R. 219 par. 3) was first raised before the Supreme Court of Georgia by alleging that the Court of Appeals of Georgia, in setting up a misrepresentative and deceptive statement of facts in petitioner's case and then deciding petitioner's case on the basis of the misrepresentative and deceptive statement of facts so set up, had violated petitioner's rights under the due process clause and the

equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States. This question was decided adversely to petitioner. If petitioner's claim had been decided in petitioner's favor, it would have required that the Supreme Court of Georgia grant certiorari and reverse the judgment of the Court of Appeals.

The Court of Appeals of Georgia is the highest court of the State in which a decision could be had, unless the Supreme Court of Georgia had granted certiorari.

Questions Presented

Federal Question 1. Whether the procuring of a criminal conviction (that could not have been obtained otherwise) by suppressing and withholding evidence that would have resulted in a verdict of not guilty and by the use of testimony known at the time to be perjury, is a violation of the due process clause of the Fourteenth Amendment to the Constitution.

Federal Question 2. Whether the arbitrary and improper deciding of a case by an Appellate court in violation of every applicable law, statutory or decision, and different from the decision that had been rendered to all others in similar circumstances, is a violation of the equal protection of the laws clause and the due process clause of the Fourteenth Amendment to the Constitution.

Federal Question 3. Whether the setting up by an Appellate Court of a misrepresentative and deceptive statement of facts in a case and then deciding the case on the basis of the misrepresentative and deceptive statement of facts so set up, is a violation of the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution.

Statutes Involved

The pertinent statute is short and is printed below:

Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U. S. C. Const. Amend. 14, Sec. 1.

Statement

Petitioner was convicted of voluntary manslaughter on the perjured testimony of Mary Jane Harrison, the State's main witness, that petitioner had followed Emma Johnkins back into the *third* room of an apartment and had there shot her while she was sitting on a trunk (par. 4 of affidavits of each of ten trial jurors R. 185-197). Except for this perjured testimony of the State's main witness that petitioner had followed Emma Johnkins back into the *third* room of an apartment and there shot her while she was sitting on a trunk, petitioner would have been found not guilty. (Par. 4 of affidavits of each of ten trial jurors R. 185-197). Petitioner had, from the beginning, stated that all action took place in the *first* room of the apartment and that he had never gone out of the *first* room of the apartment. Petitioner was sentenced to one to three years in the penitentiary.

During the trial, petitioner learned that Mary Jane Harrison, the State's main witness, had given to a State's investigator a sworn statement in what she thought was a dying declaration (R. 103). There is no discovery in Georgia Criminal law and petitioner had no basis in Georgia law on which he could demand this dying declaration, but petitioner did nonetheless immediately request (demand) that he be permitted to see this dying declaration—one of the basic truths of the case. (R. 105 par. 7, "If that statement is made, Mr. Jones, I would like very much to have it in court tomorrow where we can get this thing cleared up".)

The State failed and refused to permit petitioner to see this dying declaration and suppressed and withheld from the jury this dying declaration that would have shown petitioner not guilty (par. 4 of affidavits of ten jurors R. 185-197) and that would have made the use of the perjured testimony impossible.

There were five signed copies of this sworn dying declaration and all of these copies were under the control of the State at the time of the trial.

When they were shown this dying declaration of Mary Jane Harrison, the State's main witness, who did not die but who later testified at the trial and on whose testimony petitioner had been convicted (R. 185-197), ten members of the trial jury each made affidavit that petitioner was convicted on the testimony of Mary Jane Harrison that petitioner had followed Emma Johnnekins back into the *third* room of the apartment and there shot her, and that if this dying declaration, (given before anyone had had an opportunity to get to Mary Jane Harrison and tell her what to say, and in two separate, distinct, and unrelated places of which dying declaration Mary Jane Harrison states that neither petitioner nor Emma Johnnekins had ever left the *first* room of the apartment), had been before them at the time of the trial, they would have found petitioner not guilty (R. 185-197). (The affidavits of the ten trial jurors, in effect, held that if all action took place in the *first* room of the apartment then petitioner was not guilty of anything.)

Petitioner applied for new trial on this newly discovered evidence (dying declaration). By order of the trial judge, all evidence on the hearing on the motion for new trial was by affidavit only (R. 198 par. 2). On the hearing, the only evidence material to the case was the affidavits of the ten jurors (R. 185-197). These affidavits were not denied by the State and the State submitted no evidence whatever in any

attempt to disprove these affidavits. On the hearing, there was no evidence whatever that this newly discovered evidence (dying declaration) would *not* have resulted in different verdict on the *first* trial of the case or that this newly discovered evidence would *not* result in a different verdict on a *new* trial of the case.

The fact that the State had had this dying declaration in its files at the time of the trial, the fact that this dying declaration would have resulted in a verdict of not guilty (Par. 4 of affidavit of each of the trial jury, R. 185-197), the fact that the State had suppressed and withheld this dying declaration from petitioner and from the jury, and the fact that the evidence that convicted petitioner was known at the time to be perjury, was not denied. Not one of these facts has ever been denied.

The trial judge overruled petitioner's motion for new trial (R. 199). Petitioner's bill of exceptions to the Court of Appeals of Georgia was overruled (opinion at R. 199-202) and the Supreme Court of Georgia denied certiorari (R. 225).

Discussion of the Federal Questions

Federal Question 1. (R. 208) Is the procuring of a conviction in petitioner's case by the suppression and withholding by the State of evidence that would have resulted in a verdict of not guilty (R. 185-197) and by the use of evidence known to be perjury, a violation of the due process clause of the Fourteenth Amendment to the Constitution?

The State had five signed copies of this sworn dying declaration that would have resulted in a verdict of not guilty (R. 185-197) in its files at the time of the trial and not only suppressed and withheld this dying declaration (that would have resulted in a verdict of not guilty, R. 185-197) from the jury but refused petitioner's demand (R. 105 par. 7, "If that statement is made, Mr. Jones, I would like very

much to have it in court tomorrow where we can get this thing cleared up") that petitioner be permitted to see this dying declaration.

For the State to have put this dying declaration in evidence or to have permitted petitioner to see this dying declaration, would have made it impossible for the State to use this perjured testimony on which petitioner was convicted. The act of suppressing and withholding this dying declaration was an essential and integral part of the perjured testimony itself and of the use of this perjured testimony. This dying declaration was the ray of light in the situation brought by the State's main witness before anyone had had an opportunity to get to Mary Jane Harrison and tell her what to say (and this is most important), that would have shown that petitioner's statement from the beginning had been correct, and would have made any attempt to use the perjured testimony absurd.

This dying declaration would have shown (by the eternal fitness of things and by bringing light into a moment that was otherwise obscure) to the jury or to anyone familiar with the case, the parties, the witnesses, and the background, that petitioner was not guilty (R. 185-197) and the State knew this and withheld this dying declaration for that very reason.

The State knew, and could not have failed to know, that to permit the jury or petitioner to see this dying declaration would have resulted in a verdict of not guilty and would have made the use of the perjured testimony impossible, and knowing this the State suppressed and withheld the dying declaration that would have resulted in a verdict of not guilty, and used the perjured testimony instead.

The fact that the State had this dying declaration in its files at the time of the trial, the fact that this dying declaration would have resulted in a verdict of not guilty, the fact

that the State suppressed and withheld this dying declaration from the jury and from petitioner, the fact that the State had knowingly used this perjured testimony: not one of these facts has ever been denied. They cannot be denied.

The only possible answer to Federal Question 1 is: Yes. *Mooney v. Holohan*, 294 U. S. 103; *Pyke v. Kans.*, 317 U. S. 213.

A conviction obtained in violation of the due process clause or the equal protection of the laws clause of the Fourteenth Amendment to the Constitution, is absolutely and totally void. (And this would be true even tho the defendant was guilty as charged.) *Norris v. Ala.*, 294 U. S. 587; *Hill v. Texas*, 316 U. S. 400.

Petitioner is not a lawyer and has had no law training.

When the trial judge overruled petitioner's motion for new trial on this newly discovered evidence, petitioner had already spent more than \$10,000.00 as attorneys' fees and more than \$5,000.00 as court and other costs in trying to defend himself against what he knew to be fraud. And petitioner was faced with the necessity of taking over his own case. The best that petitioner can hope to do is to raise the veil and let this Supreme Court see for itself the violation of petitioner's rights under the Constitution.

Petitioner believes that the suppression of this dying declaration that would have resulted in a verdict of not guilty (R. 185-197) and the knowing use of this perjured testimony, or either of these two items alone, under Federal Question 1 absolutely control his case and that nothing else is necessary. However, petitioner's rights guaranteed by the Constitution have been violated three different times and under two different Federal Questions by the Court of

Appeals of Georgia and petitioner will deal with those below under Federal Question 2 and Federal Question 3.

Federal Question 2. (R. 217 par. 10 and R. 218 par. 4). Is the arbitrary and improper deciding of petitioner's case by the Court of Appeals of Georgia in violation of every law, statutory and decision, and different from the decisions of this Court of Appeals of Georgia in similar circumstances on every other case ever decided by this Court of Appeals, a violation of the equal protection of the laws clause and of the due process clause of the Fourteenth Amendment to the Constitution of the United States?

The applicable laws of Georgia necessary in testing this violation of petitioner's rights, cover two points: where the newly discovered evidence would have resulted in a different verdict on *first* trial, and where the newly discovered evidence *would* result in different verdict on *new* trial. Actually these two points are precisely equivalent—a jury is supposed to always give the same verdict on the same law and evidence, whether on the first trial, the second trial, or any other trial.

The statutory law on this is Georgia Code, Section 70-204. "NEWLY-DISCOVERED EVIDENCE.—A new trial may be granted in all cases when any material evidence, not merely cumulative or impeaching in its character, but relating to new and material facts shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the court within the time allowed by law for entertaining a motion for new trial." (Under Georgia Code, Section 102-103 "may" in above usage means "shall" or "must".) On compliance with this code section, new trial is not only a right founded in justice, but it is an absolute legal right.

This Code section does not mention "different result" on first trial or on new trial but all Appellate courts, all justice, and all common sense, hold that if the newly discovered evidence *would have* resulted in different verdict on the first trial (or *would result in different verdict on new trial*), the newly discovered evidence would *certainly* be material.

Every decision, not one exception, of the Supreme Court of Georgia (by which the Court of Appeals of Georgia is bound under the Constitution of Georgia, Code Section 2-3708, "The decisions of the Supreme Court shall bind the Court of Appeals as precedents,") not one exception (and including specifically *Mann v. State*, 34 Ga. 1; *Mills v. May*, 42 Ga. 623; *Widener v. State*, 54 Ga. 312; *Long v. State*, 54 Ga. 564; *Thompson v. State*, 60 Ga. 619; *Gregory v. Harrell*, 88 Ga. 170; *Cooper v. State*, 91 Ga. 363; *Stephens v. State*, 99 Ga. 200; *Carr v. State*, 106 Ga. 737;) and every other decision of this Court of Appeals of Georgia, not one exception, (including specifically *Moore v. State*, 11 Ga. App. 259; *Fehn v. State*, 11 Ga. App. 329; *Deason v. State*, 11 Ga. App. 759; *Nolan v. State*, 14 Ga. App. 824; *Paden v. State*, 17 Ga. App. 113; *Carson v. State*, 20 Ga. App. 82; *Todd v. Jackson*, 24 Ga. App. 519; *Harper v. State*, 50 Ga. App. 298; *McDaniel v. State*, 74 Ga. App. 5), has held that if the newly discovered evidence would have produced a *different* result (verdict) on the first trial and the other technical requirement of the law as to diligence, etc. are met, then new trial should be granted. Different result on first trial is an absolutely controlling point.

The Court of Appeals of Georgia held that all other requirements of law for new trial were met by petitioner (R. 200-201).

Paragraph 4 of the affidavits of each of the ten jurors (R. 185-197) showed unequivocally that if this newly discovered evidence had been before them on the first trial,

they would have given a different result. These affidavits were not challenged or questioned and must be accepted as true.

Here we have absolute, total, mathematical, compliance with the requirements of law for new trial. Ten members of the trial jury swore that the newly discovered evidence would have produced different result on *first* trial. Every decision of the Court of Appeals in every other case ever decided by it on similar circumstances granted new trial. The Court of Appeals refused new trial in petitioner's case—different treatment.

Different treatment, treatment different from the treatment awarded to others in like circumstances, is the test of the equal protection of the laws under the Fourteenth Amendment.

The Court of Appeals of Georgia violated petitioner's rights guaranteed by the equal protection of the laws and the due process clauses of the Fourteenth Amendment to the Constitution of the United States, and this Supreme Court should reverse petitioner's case on this ground alone even if there were no other violation of petitioner's rights under the Constitution in petitioner's case.

Federal Question 3. (R. 219 par. 3) Is the setting up by the Court of Appeals of Georgia of a misrepresentative and deceptive statement of facts in petitioner's case and then deciding petitioner's case on the basis of the misrepresentative and deceptive statement of facts so set up, a violation of petitioner's rights guaranteed by the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution?

This goes to the very heart of justice. This violates the basic concepts on which America is founded and the basic concepts of American justice. If an Appellate court (or any other court) may decide a case, not on the facts

of the case at bar, but on the basis of a misrepresentative and deceptive statement of facts set up by the deciding court, then we would have no justice and the rights guaranteed by the Constitution of the United States would have no meaning whatever.

A fact that would have absolutely controlled petitioner's case before the Court of Appeals of Georgia was: Each of the ten trial jurors had sworn that on *new* trial of the case, using the newly discovered evidence, they would give different result. Neither these affidavits nor the statements therein were denied or challenged in any way whatever and they must be accepted as true. For the Court of Appeals to have placed this fact (that ten members of the trial jury had each sworn that on new trial of the case using the newly discovered evidence, they would find petitioner not guilty) in its statement of facts and then properly decided petitioner's case on the then full and correct statement of facts would have absolutely required that petitioner be granted new trial.

Petitioner named, directly or indirectly, this fact, different result on new trial, and the fact that each of the ten jurors had sworn that on new trial using the newly discovered evidence they would give different result, as a controlling fact in his case 22 separate and different times in his first brief, 12 separate and different times in his rebuttal brief, and 10 separate and different times in his motion for rehearing; and in his motion for rehearing petitioner specifically requested that this controlling fact be placed in the Court of Appeals' statement of facts of the case; and yet the Court of Appeals failed and refused to put this controlling fact in its statement of facts and decided petitioner's case on the basis of the materially, and controllingly, incomplete, and therefore misrepresenta-

tive, and deceptive statement of facts set up by the Court of Appeals.

The Court of Appeals of Georgia violated petitioner's rights under the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution and petitioner's case should be reversed by this Supreme Court on this point alone even if there were no other violation of petitioner's rights in petitioner's case.

Reason for Granting the Writ

Petitioner's rights guaranteed to him by the Constitution of the United States have been violated.

All other courts have turned down petitioner's claim for relief.

Besides this Supreme Court, the only possible relief would be energy, time, and money, consuming habeas corpus.

Habeas corpus before the State courts, with the State Supreme Court and the State Court of Appeals still holding that *Burke v. State*, 205 Ga. 656, controls petitioner's case two years after this Supreme Court of the United States directed Burke in this same case, *Burke v. Ga.*, 338 U. S. 941 to overlook the State Courts and go direct to the Federal District Court, would be futile and a total waste of time and money. (Petitioner's case is distinguished from the *Burke* case in this: In the *Burke* case charge of the knowing use of perjured testimony was immediately and vigorously denied, while in petitioner's case this charge has never been denied. Too, the *Burke* case did not involve the suppression and withholding of evidence that would have shown defendant not guilty.) After a year or two more of effort, expense, and trial, appeals, applications for certiorari, etc., this case would inevitably be before this Supreme Court of the United States again.

But even if this Supreme Court should direct petitioner to overlook the State Courts in habeas corpus, there is in petitioner's case, by now, another overwhelming factor. Petitioner has already spent more than \$15,000.00 in attorneys' fees and costs in his case in trying to defend himself against this fraud. Surely, there should be a limit somewhere to what a citizen of the United States is required to do to protect himself against violations of his rights guaranteed to him by the Constitution.

In all conscience, this limit has long ago been passed in petitioner's case; and petitioner respectfully submits that this Supreme Court of the United States should grant him certiorari and void the judgment of the trial court below.

Conclusion

For the foregoing reasons, this petition for the writ of certiorari should be granted.

Respectfully submitted,

MARION W. STEMBRIDGE,

Pro se.

(8760)

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CHARLES ELMORE CROPLEY
CLERK

No. 474

MARION W. STEMBRIDGE,

Petitioner,

THE STATE OF GEORGIA,

Respondent

REPLY BRIEF OF PETITIONER

Petitioner first wishes to call to the attention of this Court that no answer whatever has been filed in this case tho the State was regularly and properly served.

Also, petitioner wishes to call to the attention of this Court that no allegation of charge made in petitioner's Petition has ever been denied.

Also, petitioner wishes to call to the attention of this Court that in petitioner's case it is charged and not denied that the State suppressed and withheld from the jury and from the trial court evidence that would have shown petitioner not guilty; and in petitioner's case it is charged and not denied that perjured testimony was knowingly used.

This the 30th day of Jan., 1952.

Respectfully submitted,

MARION W. STEMBRIDGE,

Pro se.

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CHARLES ELMORE CROPLEY

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE,

Petitioner,

vs.

THE STATE OF GEORGIA.

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA
AND THE SUPREME COURT OF GEORGIA

MARION W. STEMBRIDGE,

Pro se

Home Address:

Milledgeville, Georgia

INDEX

SUBJECT INDEX

	Page
Federal Questions 2 and 3	1
Federal Question 1	

TABLE OF CASES CITED

<i>Gunnells v. State</i> , 199 Ga. 486	6
<i>Harris v. State</i> , 183 Ga. 106	6
<i>Hill v. Texas</i> , 316 U. S. 400	4, 7
<i>Joyner v. State</i> , 208 Ga. 435	6
<i>McAfee v. State</i> , 205 Ga. 545	6
<i>Mooney v. Holohan</i> , 294 U. S. 103	2, 4
<i>Norris v. Ala.</i> , 294 U. S. 587	4, 7
<i>Pyle v. Kans.</i> , 317 U. S. 213	4
<i>Shelley v. Kraemer</i> , 334 U. S. 1	7
<i>Smith v. State</i> , 204 Ga. 184	6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE,

vs.

Petitioner,

THE STATE OF GEORGIA,

Respondent

BRIEF OF PLAINTIFF IN CERTIORARI

Federal Questions 2 and 3. There are three Federal Questions in petitioner's case. Petitioner insists on Federal Questions 2 and 3 but he has already discussed these questions in his brief as petitioner for certiorari and he will not discuss them further in this Brief.

Discussion of Federal Question 1

Federal Question 1. (R. 208) Is the procuring of a conviction in petitioner's case, by the suppression and withholding by the State of evidence that would have resulted in a verdict of *not guilty* (pars. 4 and 6 of the Affidavit of each of ten trial jurors R. 185-197) and by the use of evidence known to be perjury, a violation of the due process clause of the 14th Amendment to the Constitution of the United States?

1. The conviction could not have been obtained except by the use of this perjured testimony of Mary Jane Harrison

that petitioner had followed Emma Johnnekins back into the *third* room of the apartment and shot her while she was sitting on a trunk (pars. 4 and 6 of the affidavit of each of ten trial jurors. R. 185-197).

2. THE DELIBERATE SUPPRESSION AND WITHHOLDING (FROM THE TRIAL COURT AND FROM THE TRIAL JURY) OF EVIDENCE THAT WOULD HAVE SHOWN DEFENDANT *Not Guilty* IS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE CONSTITUTION.

This Court has passed on this point (the withholding of evidence that would have shown defendant *not guilty*) many times in connection with the knowing use of perjured testimony (typical cases are: *Mooney v. Holohan*, 294 U. S. 103; *Pyle v. Kans.*, 317 U. S. 213) and has in every case held that the due process clause of the 14th Amendment to the Constitution was violated; but this Court has never passed on this one point by itself.

There is in petitioner's case mathematical proof that evidence that would have shown petitioner *not guilty* was deliberately suppressed and withheld from the trial court and from the trial jury, and petitioner respectfully submits that the public interest would be served if this Court should rule on this point by itself in this case.

The planned suppression and withholding (from the trial court and from the trial jury), of evidence that would have shown defendant *not guilty* is the deliberate, planned, deception by the State of the trial court and of the trial jury. It is just as much a knowing deception of the court as is the knowing use of perjured testimony. It is the deliberate giving to the trial court and to the trial jury of a false and deceptive picture of the case, and of the whole truth of the case. It is the knowing, conscious, planned, deceiving of the court and the knowing, conscious, planned, attempt by the State to defraud the defendant of his in-

herent right—the right to be tried by the truth in his case and by all of the truth in his case. It violates the basic concepts of justice and the basic concepts on which America is founded. Doing this, it is inescapably a violation of the due process clause of the 14th Amendment.

Too, it should be remembered that the deliberate suppression and withholding of evidence that would have shown the defendant *not guilty* is always an offense against an innocent person, while the knowing use of perjured testimony is an offense against one who could be guilty.

There is still before this Court the question of whether this evidence (the dying declaration of Mary Jane Harrison) was deliberately withheld.

a. This evidence existed (R. 103 last par. thru 104 par. 4) and was in the hands of the State at the time of the trial. (R. 104 pars. 4 and 5).

b. Petitioner demanded this evidence (R. 105, par. 7 “if that statement is [was] made, Mr. Jones, I would like very much to have it in court tomorrow where we could get this thing cleared up”), tho under Georgia law petitioner had no legal right to demand it. (There is no discovery in Georgia Criminal law.)

c. Tho petitioner demanded this evidence, this evidence was suppressed and withheld from petitioner and from the trial court and from the trial jury.

d. Under the circumstances present in this case, the suppression and withholding of this evidence could not have been accidental. This evidence must necessarily have been withheld as the result of an intention to withhold it.

Evidence that would have shown petitioner *not guilty* was deliberately suppressed and withheld in petitioner's case.

The deliberate suppression and withholding of evidence that would have shown defendant *not guilty* is a violation of the due process clause of the 14th Amendment.

A conviction obtained in violation of the due process clause of the 14th Amendment is absolutely and totally void (*Norris v. Ala.*, 294 U. S. 587; *Hill v. Texas*, 316 U. S. 400), and this Supreme Court should void the judgment of the trial court on this one point by itself, even tho there were no other violations of petitioner's Constitutional rights in petitioner's case.

3. The knowing use of ~~perjured~~ testimony is a violation of the due process clause of the 14th Amendment to the Constitution of the United States.

This question is so well settled that it needs no discussion. (Typical authorities are: *Mooney v. Holohan*, 294 U. S. 103; *Pyle v. Kans.*, 317 U. S. 213.)

So, the only question before this Court is a question of fact: (a) Was this testimony perjured testimony?; and (b) Was this perjured testimony knowingly used?

a. Was this testimony perjured testimony? The very best evidence in the world, as to whether this testimony was perjured, is the affidavits of ten of the trial jurors. These jurors were set up as jurors by the State; they were drawn by the State to serve as jurors at this trial court; they have already been accepted by the State to pass on *this* case. No attempt whatever has ever been made by the State to question in any way or manner the validity, the justice, or the truth of these affidavits of these ten jurors, and none of these could now be questioned.

These jurors knew the case; they knew personally all of the parties and witnesses in the case; they knew the circumstances and the background.

Each of these ten jurors swears that the dying declaration of Mary Jane Harrison showed to him that petitioner

was *not guilty*—in other words, that the testimony of Mary Jane Harrison on the witness stand that petitioner followed Emma Johnekins back into the *third* room of the apartment and there shot her was perjury. This testimony was perjured testimony.

b. Was this perjured testimony knowingly used—did the State know at the time of its use that this testimony was perjured?

In matters such as this there is no way to apply to the parties any exterior tests that could give us the right answer. There is no machine that could give us the right answer. There is no chemical test that could give us the right answer. But the law does not require either of these. The law requires only that we get the reasonable, logical, sensible, human, answer:

At the time that the State sent Mary Jane Harrison to the witness stand to swear that petitioner followed Emma Johnekins back into the *third* room and there shot her while she was sitting on a trunk, the State had in its files the sworn dying declaration of this same Mary Jane Harrison, and in two separate, distinct, and unrelated places of which dying declaration Mary Jane Harrison had sworn that petitioner had *never* gone into any room of the apartment except the *first* room. This dying declaration was taken by the State's investigator, it was sworn to and was given by Mary Jane Harrison for the purpose of being used in court in the trial of this case, so that the State could not have failed to know that one of her statements was perjury.

Ten members of the trial jury, familiar with the circumstances of this case, each swears that of the two sworn diametrically opposite statements of Mary Jane Harrison, her testimony before them on the witness stand was the perjured testimony. So, the only question is: Did the State

know as much about the case as the members of the jury knew? The answer to that is: The State always knows more about a case than the jury knows.

The State's attorney lives in this county (of fewer than 15,000 people) and he knows all of the parties and the witnesses even better than the jury knows them. The State could never plead stuporosity on the part of the State's attorney in this case. His perception is extraordinarily high.

The State knew that the dying declaration was given while Mary Jane Harrison felt that she was in the article of death. The State knew that there was a great deal of perjury in this case—there was far too much swearing to diametrically opposite statements. The State knew that this dying declaration was given before anyone had an opportunity to see Mary Jane Harrison and tell her what to swear to (and this is most important).

Even if we should leave out the dying declaration in the State's possession at the time, all of the other factors in the case; the eternal rightness of things; the eternal fitness of things, all showed to the State, and could not have failed to show to the State that the testimony that petitioner had followed Emma Joharekins back into the third room of the apartment and there shot her while she was sitting on a trunk, was perjury.

There is another truth that petitioner should place before this Court. During the past five years every case of the State's attorney involved in this case, that has been appealed to the Supreme Court of Georgia, has carried with it a charge of unfair, prejudicial, and illegal handling of the case by this State's attorney. (*Smith v. State*, 204 Ga. 184; *McAffee v. State*, 205 Ga. 545; *Joyner v. State*, 208 Ga. 435.) Other typical cases carrying this same charge are: *Harris v. State*, 183 Ga. 106; *Gunnells v. State*, 199 Ga. 486.

This testimony was perjured testimony and was knowingly used by the State.

A conviction obtained by the knowing use of perjured testimony is a violation of the due process clause of the 14th Amendment and such a conviction is absolutely and totally void (*Norris v. Ala.*, 294, U. S. 587; *Hill v. Texas*, 316 U. S., 400) and petitioner respectfully submits that it is the obligation of this Supreme Court to void the judgment of the trial court on this one point alone even tho there were no other violations of petitioner's rights guaranteed (*Hill v. Texas*, 316 U. S. 400) to him by the Constitution. (*Shelley v. Kraemer*, 334 U. S. 1.)

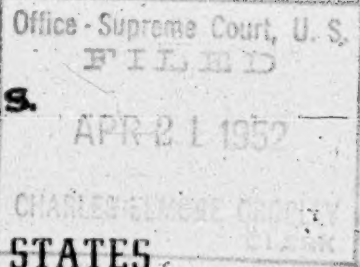
Respectfully submitted,

MARION W. STEMBRIDGE,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE,

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vs.

THE STATE OF GEORGIA,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA
AND THE SUPREME COURT OF GEORGIA

REBUTTAL BRIEF OF PETITIONER IN CERTIORARI

MARION W. STEMBRIDGE,

Pro se

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SUPREME COURT OF THE UNITED STATES

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REBUTTAL BRIEF OF PETITIONER IN CERTIORARI

In reply to petitioner's brief on certiorari, respondent has filed a brief, the essential meaning of which is: "Respondent respectfully denies the jurisdiction of this Court and contends that no decision of the questions here presented has been obtained by petitioner from the highest court of Georgia empowered to act thereon."

The U. S. Code, Title 28, Section 1257 (3) reads: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had", and petitioner will deal with that wording.

There are two Appellate courts in Georgia—the Supreme Court of Georgia and the Court of Appeals of Georgia, and the Supreme Court of Georgia is the higher of the two.

There are three Federal Questions in petitioner's case.

.

We will first go into respondent's assertion that petitioner's Federal Question 1 was not decided by the highest court of a State in which a decision could be had. Respondent also makes the additional assertion that this Federal Question was not laid at the right time.

There are more than one hundred decisions of this Court in *civil* cases even in which this Court has held that if the Federal Question was considered and decided by the State Appellate Court, that settled it.

There are more than one hundred decisions of this Court in criminal cases in which this Court has held that if the State Appellate Court considered the Federal Question properly and timely laid and considered and decided such question, that settled it.

This Federal Question 1 was considered properly and timely laid by the Court of Appeals of Georgia and was considered and decided by this Court of Appeals. (R. 229-230.)

This decision of the Court of Appeals of Georgia, adverse to petitioner, was immediately placed by petitioner before the Supreme Court of Georgia on application for certiorari. Petitioner's claim was of violation of petitioner's Federal rights guaranteed by the Fourteenth Amendment to the Constitution of the United States and the effect of this claim, if allowed, would have been to have completely voided the judgment of the trial court, however adequate any of the State's non-Federal grounds against petitioner may have been. The decree, or order, of the Supreme Court of Georgia denying Certiorari was neces-

sarily a legal decision of petitioner's claim. But, for purposes of tests, let us assume even that the Supreme Court of Georgia should formally declare that they refused to decide petitioner's claim; that still would not defeat petitioner's claim. States or State courts may not impair a citizen's Federal Constitutional rights under the Fourteenth Amendment in criminal trials by any method, plan, scheme, procedure, or the lack thereof, or by refusing to decide a petitioner's claim. Petitioner's Federal Question 1 was decided by both the Court of Appeals of Georgia and the Supreme Court of Georgia and was certainly decided by the highest court of a State in which a decision could be had.

Petitioner's Federal Question 1 is properly before this Supreme Court of the United States.

.

The claims in petitioner's Federal Question 2 and Federal Question 3 of violations of petitioner's rights guaranteed by the Constitution of the United States were first made by petitioner before the Supreme Court of Georgia. (R. 217, last paragraph; R. 218, paragraph 4; R. 219, paragraph 3.) These claims were of violations of petitioner's Federal Constitutional rights by the next lower court (the Court of Appeals of Georgia) and these claims could not have been made any earlier or to any other State court.

These claims were of violations of petitioner's Federal rights guaranteed by the Fourteenth Amendment to the Constitution and the effect of these claims, if allowed, would have been to have reversed the judgment of the Court of Appeals of Georgia and to have sent the case back to the trial court for a new trial; however adequate any of the State's non-Federal grounds against petitioner may have been alleged to have been.

The decree, or order, of the Supreme Court of Georgia denying certiorari was necessarily a legal decision of petitioner's claims by the highest court of a State in which a decision could be had, or it had the same effect as a decision insofar as petitioner's claims were concerned.

Petitioner's Federal Question 2 and Federal Question 3 were properly and timely laid and were necessarily decided (or if decision upon them was refused, the effects on petitioner's rights are the same as if they had been decided) by the highest court of a State in which a decision could be had; and petitioner's Petition for Certiorari is properly before this Supreme Court of the United States on Federal Question 2 and Federal Question 3.

There are only three Federal Questions in petitioner's case and each of these Federal Questions is properly before this Court.

Respondent makes various other hair-splitting and labyrinthian technical objections which are both without basis and without a proper place in a case of this kind.

This case is a claim of violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States in the trial of a criminal case and this Court has held time after time that in such cases the question before this Court is: Were the petitioner's rights under the Fourteenth Amendment of the Constitution actually violated? In some instances where this charge has been made, the claim for relief was nothing more formal than a rambling report informing this Court of the victim's claim and this Court has ordered the Record sent up from whatever court or courts had the Record or parts thereof, and without regard to the decisions, decrees, or orders of intervening courts, however high; and granted the victim relief.

Too, this is a criminal case in which petitioner has been under sentence to the penitentiary for almost three years;

with all of the attendant temporary cloud upon petitioner's reputation, and the uneasiness, insecurity, uncertainty, and losses to petitioner's business that inescapably inhere in such a situation; and all because evidence that would have shown petitioner *not guilty* was suppressed and withheld from the trial court and from the trial jury (Par. 6 of the affidavits of each of the trial jurors, R185-197) and perjured testimony was knowingly used instead. Too, petitioner has now spent more than \$16,000.00 in attorneys' fees, court costs, and other necessary costs and expenses in his case, in addition to three years of effort that from the standpoint of a layman must be regarded as totally wasted insofar as any constructive asset value to petitioner is concerned.

This is not right. No part of this is right and this should be stopped now.

All of the parties to this case are now before this Supreme Court and petitioner respectfully submits that this Supreme Court of the United States should now give a decision on merits of this case:

At no point in respondent's brief, does respondent deny any of petitioner's five charges of violations of petitioner's rights guaranteed to him by the Fourteenth Amendment to the Constitution and at no point does respondent deny any statement of fact that petitioner has ever made with reference to these five charges.

At no point in respondent's twenty-six page brief (with one-half page of blank paper) did respondent find room to make the simple statement: We deny that evidence that would have shown defendant *not guilty* was deliberately suppressed and withheld from the trial court and from the trial jury; or, We deny that perjured testimony was knowingly used; or, We deny that petitioner's rights under the equal protection clause and the due process clause, as

listed under his Federal Question 2 were violated; or, We deny that petitioner's rights under the due process clause and the equal protection clause as listed under his Federal Question 3 were violated.

No charge of petitioner, that his Constitutional rights were violated (as listed under any of the five specifications of his three Federal Questions) has ever been denied and no statement of fact, made by petitioner in connection with any of these charges, has ever been denied.

And this is true notwithstanding that the attorneys for respondent, who prepared and signed respondent's brief, were the Attorney General of Georgia, an Assistant Attorney General of Georgia, a Special Deputy Assistant Attorney General of Georgia, and the State's attorney involved in this case; and the further fact that each of these attorneys knew that petitioner's charges, *if not denied*, controlled petitioner's case.

Some of these charges had been made before three courts and all of these charges had been made before two courts in which respondent had full and proper legal service and in which respondent had both the manifest legal duty and the self interest to deny these charges if they were not true; but not one of petitioner's charges, and not one of petitioner's statements of fact with reference to these charges, has ever been denied.

Petitioner's charges were not denied because they could not be denied. If these charges had been denied the Record would show that they were true.

Petitioner wishes to lay before this Court the following facts:

1. In petitioner's case, it is charged and not denied that evidence that would have shown petitioner *not guilty* and would have resulted in a verdict of *not guilty*, was deliberately suppressed and withheld from the trial court and from

the trial jury. (The first specification in petitioner's Federal Question 1, page 3, Petition for Certiorari.)

No statement of fact made by petitioner in connection with this charge has ever been denied.

2. In petitioner's case, it is charged and not denied that perjured testimony was knowingly used. (The second specification in Federal Question 1, page 3, Petition for Certiorari.)

No statement of fact made by petitioner in connection with this charge has ever been denied.

3. In petitioner's case, it is charged and not denied that petitioner's rights under the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution were violated. (Federal Question 2, page 3, Petition for Certiorari.)

No statement of fact made by petitioner in connection with this charge has ever been denied.

4. In petitioner's case, it is charged and not denied that petitioner's rights under the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution were violated. (Federal Question 3, page 3, Petition for Certiorari.)

No statement of fact made by petition in connection with this charge has ever been denied.

Petitioner can only repeat some statements made in his Petition for Certiorari:

"Petitioner's rights guaranteed to him by the Constitution of the United States have been violated.

"All other courts have turned down petitioner's claim for relief.

"Besides this Supreme Court, the only possible relief would be energy, time, and money, consuming habeas corpus.

"Habeas corpus before the State courts, with the State Supreme Court and the State Court of Appeals still holding that *Burke v. State*, 205 Ga. 656, controls petitioner's case two years after this Supreme Court of the United States directed *Burke* in this same case, *Burke v. Ga.*, 338 U. S. 941 to overlook (disregard) the State Courts and go direct to the Federal District Court, would be futile and a total waste of time and money. (Petitioner's case is distinguished from the *Burke* case in this: In the *Burke* case charge of the knowing use of perjured testimony was immediately and vigorously denied, while in petitioner's case this charge has never been denied. Too, the *Burke* case did not involve the suppression and withholding of evidence that would have shown defendant not guilty.) After a year or two more of effort, expense, and trial, appeals, applications for certiorari, etc., this case would inevitably be before this Supreme Court of the United States again.

"But even if this Supreme Court should direct petitioner to overlook the State Courts in habeas corpus, there is in petitioner's case, by now, another overwhelming factor. Petitioner has already spent more than \$15,000.00 (now \$16,000.00) in attorneys' fees and costs in his case in trying to defend himself against this fraud. Surely, there should be a limit somewhere to what a citizen of the United States is required to do to protect himself against violations of his rights guaranteed to him (without condition or price) by the Constitution.

"In all conscience, this limit has long ago been passed in petitioner's case; and petitioner respectfully submits that this Supreme Court of the United States should . . . void the judgment of the trial court below."

P

Conclusion

Because of the truths set out in this brief and in petitioner's Petition for Certiorari and in petitioner's two other briefs; petitioner respectfully submits that this Supreme Court of the United States should void the judgment in the trial court in petitioner's case.

Respectfully submitted;

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SUPREME COURT

**In the
SUPREME COURT OF THE UNITED STATES
October Term, 1951**

No. 474

**MARION W. STEMBRIDGE,
Petitioner,
VS.**

**STATE OF GEORGIA
Respondent.**

**On Writ of Certiorari to the Court of Appeals of the
State of Georgia and to the Supreme Court of the
State of Georgia**

BRIEF FOR THE RESPONDENT

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INDEX

Opinion Below	1
Jurisdiction	1
Statutes Involved	1
Statement	2
Summary of Argument	6
Argument	7
Conclusion	17
Appendix	18

TABLE OF AUTHORITIES

CASES:

Beckman v. Atlantic Refining Co. 181 Ga. 456, 182 SE 595 . . .	8
Burke v. State, 76 Ga. App. 612, 475 SE (2d) 116	11
Burke v. State, 205 Ga. 520, 54 SE (2d) 348	10, 11
Burke v. State, 205 Ga. 656, 54 SE (2d) 350	13, 14, 15
Burke v. Georgia, 338 US 941	14, 15
Calhoun v. Babcock Bros. Lumber Co. 198 Ga. 74, 30 SE (2d) 872	8
McRae v. Boykin, 54 Ga. App. 158, 35 SE (2d) 548	12
Miller v. State Highway Dept., 200 Ga. 485, 37 SE (2d) 365 . . .	8
Mooney v. Hollohan, 294 US 103	6, 15, 16
Persons v. Lea, 207 Ga. 385, 61 SE (2d) 832	8, 15
Powell v. Alabama, 287 US 45	16
Regents of University of Georgia v. Carroll, 338 Ga. 586	13
Stembridge v. State, 87 Ga. App. 214, 60 SE (2d) 491	2
Stembridge v. State, 54 Ga. App. 65, 65 SE (2d) 819	1, 8

CONSTITUTIONAL PROVISIONS:

Constitution of the State of Georgia of 1945.	
Art. VI, Sec. II, Para IV	8, 10, 13
Art VI, Sec II, Para VIII	8, 0, 10

STATUTORY PROVISIONS:

28 USC 1257	1, 6, 13
Georgia Code, Section 6-1607	8
24-3509	12
24-3643	9
24-3649	12
24-3801	12
38-307	9
38-1803	9
70-204	2, 7, 8, 9
70-205	3, 7
70-303	2
110-706	5, 6, 14, 15, 16

MISCELLANEOUS:

Jurisdiction of the Supreme Court of the United States, by Robertson and Kirkham (Wolfson and Kurland edition)	12
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In the
SUPREME COURT OF THE UNITED STATES
October Term, 1951

No. 474

MARION W. STEMBRIDGE,
Petitioner,

VS.

STATE OF GEORGIA
Respondent.

OPINION BELOW

The opinion of the Court of Appeals (R-199-202) is reported at 84 Ga. App. 413, 65 SE (2d) 819. The order of the Court of Appeals amending its record (R. 229) is not reported. The Supreme Court in denying certiorari (R. 225) wrote no opinion.

JURISDICTION

The jurisdiction of this Court is invoked by petitioner under Title 28 USC, Section 1257(3). Writ of certiorari was issued (R. 231) directed to the Court of Appeals and to the Supreme Court of Georgia. Respondent respectfully denies the jurisdiction of this Court and contends that no decision of the questions here presented has been obtained by petitioner from the highest court of Georgia empowered to act thereon.

STATUTES INVOLVED

The constitutionality of no statute is drawn into

issue by the statement of questions presented as contained in the petition for certiorari. Statutory and constitutional provisions relied upon by the respondent are printed as an appendix to this brief.

STATEMENT

Marion W. Stenbridge, petitioner here, was indicted by the Grand Jury of the Superior Court of Baldwin County, Georgia, for the murder of Emma Johnnekins. On trial he was found guilty of voluntary manslaughter and sentenced to serve from one to three years in the penitentiary. His motion for new trial was denied and this denial affirmed by the Court of Appeals of Georgia in *Stenbridge v. State*, 82 Ga. App. 214, 60 SE (2d) 491, decided on July 12, 1950. Thereafter, on January 15, 1951, he filed a second motion for new trial (R. 175-178) under the provisions of Ga. Code, Sec. 70-303. (Appendix p. 18). This second, or extraordinary, motion for new trial, while it contains fourteen numbered paragraphs in reality is based upon a single ground, namely that since the trial and appeal petitioner has for the first time discovered new evidence. (Ga. Code, Sec. 70-204). The new evidence discovered was said by the motion to consist of a written statement (R. 178-180) given by Mary Jane Harrison, a witness for the State, to an officer of the Georgia Bureau of Investigation immediately after the homicide. It was and is contended that facts contained in this statement of witness Harrison contradict material portions of her testimony given upon the trial for murder. (R. pp. 51-79). Witness Harrison received four bullet wounds in the affray which caused the death of Emma Johnnekins. At the time witness Harrison's written statement was made it is contended that she thought herself to be dying and considered her state-

ment a dying declaration. In fact she recovered and, as stated, testified on behalf of the State in the trial.

The second, or extraordinary, motion for new trial was accompanied by a number of affidavits. The affidavits of J. E. Jones (R. 11 and R. 182), the officer before whom witness Harrison's statement was made, purports to show the conditions under which the statement was made and the subsequent possession of the statement. Five other affidavits, Affiant Evans, R. 2; Stembridge, R. 5; Martin, R. 7; Mobley, R. 9; Ennis and Watts, R. 10), show that neither petitioner nor his counsel had knowledge of the written statement of witness Harrison at the time of trial. Other affidavits, ten in number (R. 185-196), were made by members of the jury who undertake the swear that the production of the statement of witness Harrison and disclosure of a contradiction between her evidence and written statement would have caused the return of a verdict of not guilty. This extraordinary motion for new trial was also accompanied by the statement of witness Harrison and by certain affidavits (R. 184-195) required by the terms of Ga. Code, Sec. 70-205 in motions for new trial on newly discovered evidence.

Upon the presentation of this motion and the accompanying affidavits, the trial judge on January 15, 1951, issued rule nisi (R. 198) setting the motion for hearing, restricting the hearing to affidavits and other documentary evidence, and ordering the brief of evidence in the original trial made a part of the record.

On hearing, petitioner's extraordinary motion for new trial was overruled. (R. 199). Petitioner thereupon sued out a writ of error to the Court of Appeals of Georgia, assigning error upon the overruling of this motion. (R. 1-15). The basis of the affirmation as it

appears from the opinion of the Court of Appeals (R. 199-202) is summarized in the following sentence taken from that opinion, (R. 1, bottom of page):

"It is thus evident that the new discovered evidence is no more than impeaching in character, for which reason it falls under the inhibition of Code Section 70-204 . . ."

On June 15, 1951, petitioner filed in the Court of Appeals motion for rehearing (R. 203-210). In this motion petitioner raised for the first time a legal issue which, respondent contends, was not theretofore presented to either trial or appellate court.¹ (R. 208, third paragraph). This new issue and new contention is in substance that the State knowingly made use of perjured testimony, that of witness Harrison (R. 51-79), and that this knowing use of perjured testimony constituted a denial of due process in violation of the due process clauses of the Constitution of Georgia and of the Fourteenth Amendment to the Constitution of the United States. This motion for rehearing was summarily denied without opinion by the Court of Appeals on July 17, 1951 (R. 211). Thereupon on August 16, 1951, petitioner made application to the Supreme Court of Georgia for writ of certiorari assigning error upon the Court of Appeals' failure and refusal to note or rule upon this new due process point made in motion for rehearing (R. 222). On September 12, 1951, application for certiorari was denied by the Supreme Court of Georgia (R. 225) without opinion.

We think it not amiss in this statement of facts to

¹ Petition for certiorari, p. 2, contains the following language: "Federal Question 1 (R. 208) was first raised in the Court of Appeals of Georgia by allegation that placing in this case of evidence known to be perjury, seeks to deprive petitioner of liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. This Federal Question was considered and decided adversely to petitioner. (R. 227-230)."

point out that as the case stood at this point neither the Superior (trial) Court, the Court of Appeals, nor the Supreme Court of Georgia had been called upon to rule on the constitutionality of Ga. Code Sec. 110-706 wherein it is provided that:

"Any judgement . . . obtained . . . shall be set aside . . . if it shall appear that the same was entered up in consequence of corrupt and wilfull perjury; and it shall be the duty of the court . . . to cause the same to be set aside . . .; but it shall not be lawful for the said court to do so unless the person charged with such perjury shall have been thereof duly convicted. . . ."

There was no allegation in the extraordinary motion for new trial that the prosecuting officer or any other state officer had knowledge of the falsity of witness Harrison's testimony (if indeed it was false), and that he made use of this testimony knowing it to be false and perjured. There being no such allegation, there was no denial of such conduct on the part of the officers of the State.

On October 22, 1951, some 40 days after the Georgia Supreme Court's denial of certiorari, petitioner filed in the Court of Appeals a motion to amend the record so as to show that that court had decided that Ga. Code, Sec. 110-706, relating to the setting aside of judgments obtained as a result of corrupt and wilful perjury, had in fact been considered and held by the Court of Appeals to be not unconstitutional. (R. 227-228). On the same day the Court of Appeals entered an order amending its record (R. 229-230) by reciting that in passing on the motion for rehearing that court considered and decided adversely to petitioner the constitutional question as to Ga. Code Sec. 110-706 and the due

process constitutional question raised in his motion for rehearing. No further effort was made to obtain writ of certiorari from the Supreme Court of Georgia, and no effort was made to amend the record in the Supreme Court of Georgia. This Court granted writ of certiorari "to the Supreme Court of the State of Georgia and to the Court of Appeals of Georgia."

SUMMARY OF ARGUMENT

Respondent contends that this Court is without jurisdiction under 28 U.S.C. 1257(3) because the questions here presented have never been passed upon by the highest court of the State of Georgia empowered to decide. The writ of certiorari was improvidently granted and should be dismissed for that reason, and for the further reason that the decision of the Court of Appeals of Georgia rests upon non-Federal grounds adequate to support it. Notwithstanding reference the constitutionality of Ga. Code, Sec. 110-706 by the Court of Appeals the constitutionality of that statute has not been attacked by petitioner in any court, trial or appellate, and is not here drawn into question. The doctrine of *Mooney v. Hollohan*, 294 U.S. 103, does not require the reversal of the judgment of the Court of Appeals of Georgia. Respondent does not question that the doctrine of the *Mooney* case, *supra*, requires that states afford some remedy for the attack upon a judgment of conviction obtained by the knowing use of perjured testimony. Nothing decided by the Court of Appeals of Georgia or the Supreme Court of Georgia holds that no such remedy is afforded.

ARGUMENT

None of the Federal Questions here relied upon were presented to or passed on by the trial court. The Court of Appeals and the Supreme Court of Georgia were therefore without jurisdiction to consider those questions.

Petitioner's extraordinary motion for a new trial (R. 75) consists of fourteen paragraphs, but a reading of this motion shows that these separate paragraphs were not intended to represent separate and distinct grounds of the motion. Nowhere in this pleading does petitioner say that he seeks a new trial under the provisions of Ga. Code, Sec. 70-204 (Appendix p. 18), however, no inference is possible but that the motion was predicated upon this section. Ga. Code, Sec. 70-205 sets out certain procedural requirements which must be followed to assert a claim for relief under Ga. Code, Sec. 70-204, and these requirements have been, in the main, complied with. (See accompanying affidavits, R. 180-197, R. 2-5, and R. 7-14). Any lingering doubt as to the ground upon which he sought a new trial is dispelled by petitioner's bill of exceptions to the Georgia Court of Appeals (R. 1) wherein it is stated:

"Be it further remembered that on the 15th day of January, 1951, the defendant filed an extraordinary motion for new trial on said case in the Superior Court of Baldwin County, Georgia, on the grounds of newly discovered evidence****."

Nothing contained in the trial judge's statement (R. 199) indicates a ruling upon any constitutional question. The uniform and unbroken practice of the Supreme Court of Georgia is to refuse to pass upon any constitutional issue not raised in timely manner in the

trial court. *Beckman v. Atlantic Refining Co.*, 181 Ga. 456, 182 S.E. 595; *Calhoun v. Babcock Bros. Lumber Co.*, 198 Ga. 74, 30 S.E. (2d) 872; *Miller v. State Highway Department*, 200 Ga. 485, 37 (2d) 365; Ga. Code, Sec. 6-1607 (Appendix p. 22). That court has in fact been exceedingly exacting in requiring that constitutional questions be properly raised before proceeding to pass upon them. *Persons v. Lea*, 207 Ga. 384, 61 SE (2d) 832.

The jurisdiction of both Appellate Courts of Georgia is restricted by the State Constitution to the correction of errors of law of certain trial courts. *Constitution of the State of Georgia of 1945*, Article VI, Section II, Paragraph IV, (Appendix p. 19), and Article VI, Section II, Paragraph VIII (Appendix p. 20). Indeed, the Court of Appeals in its opinion accompanying judgment rendered in this case on June 5, 1951, *Stembridge v. The State*, 84 Ga. App. 413, 65 SE (2d) 819 (R. 199) expressly refers to this limitation upon its jurisdiction.

The decision of the Court of Appeals rendered on June 5, 1951, STEMBRIDGE V. GEORGIA, 84 Ga. App. 413, 65 SE (2d) 819 (R. 199) was based upon non-Federal grounds adequate to support that decision.

This point hardly requires elaboration. The logic of the opinion is compelling upon this record. No constitutional question has been presented or ruled upon by the trial court. Petitioner, there plaintiff in error, considered the case only as a motion for new trial upon the ground of newly discovered evidence in accordance with Ga. Code, Sec. 70-204. The statement of witness Harrison (R. 178), thought to be a dying declaration when made, was inadmissible for any pur-

pose other than impeachment. (See Ga. Code, Sec. 38-307 and 38-1803).

The statute expressly provides that newly discovered evidence, which is only cumulative or only impeaching affords no cause for granting of a new trial. The statement was not evidence for any other purpose. Therefore, the trial court's denial of the motion and the Court of Appeals' affirmance were demanded by the language of Ga. Code, Sec. 70-204 (Appendix p. 18).

The Court of Appeals properly denied the motion for rehearing which for the first time sought to raise the constitutional or Federal Question (R. 208) because the effort to raise such a constitutional question then came too late, the Court of Appeals was without jurisdiction of the subject matter and the failure of the Court of Appeals in its opinion to decide a constitutional question not raised, and of which it lacked jurisdiction, afforded no reason for the granting of a rehearing.

The right to move for a rehearing in the Court of Appeals arises only by virtue of Rule 43 of that court, which has been sanctioned by legislative reenactment as a part of the Georgia Code of 1933, Ga. Code, Sec. 24-3643 (Appendix p. 23). The right to have a rehearing granted by the foregoing rule does not extend to such a situation. The denial of the rehearing was therefore required by the mandate of the court's rules.

We have already pointed out that the Court of Appeals has no constitutional jurisdiction to consider any question not ruled upon by the trial court. *Georgia Constitution of 1945*, Article VI, Section II, Paragraph VIII (Appendix p. 20). But there is in addition an even more stringent limitation on that

court's jurisdiction forbidding the consideration of this question. The Supreme Court of Georgia is given exclusive jurisdiction of all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question, and in all cases that involve the construction of the Constitution of the State of Georgia or of the United States. *Georgia Constitution of 1945*, Article VI, Section II, Paragraph IV (Appendix p. 19), *Georgia Constitution of 1945*, Article VI, Section II, Paragraph VIII (Appendix p. 20); *Burke v. The State*, 205 Ga. 520, 54 SE (2d) 348.

The constitutional and Federal Questions here relied on were not presented to or ruled upon by the highest Georgia court having jurisdiction to pass upon them.

In certiorari to the Supreme Court of Georgia, petitioner assigned error on the decision rendered by the Court of Appeals in the following language:

"L. The Court of Appeals has failed to note or rule upon applicant's claim of due process of law was violated in putting in testimony, known at the time to be perjury, against him.

"Applicant assigns error on this failure because the evidence shows that while putting in this perjured and framed testimony of Mary Jane Harrison that applicant followed Emma Johnkins into the third room and shot her while she was sitting on a trunk, the State all the time had in its files the dying declaration of Mary Jane Harrison in two separate places stated that applicant never left the first room of the apartment." (Italics added). (R. 222).

Nowhere does petitioner contend in that application for certiorari that the Supreme Court of Georgia should review and reverse the judgment of the Court of Appeals because the Court of Appeals expressly *decided* a constitutioned question. We submit that since the Court of Appeals had no jurisdiction to decide a constitutional question the Supreme Court of Georgia quite properly declined certiorari on complaint that they had *failed* to do so.

When the Supreme Court of Georgia denied certiorari on September 12, 1951 (R. 225) nothing contained in the record indicated that the Court of Appeals had in fact decided the constitutional question, and indeed petitioner then insisted that they had not done so. In *Burke v. State*, 205 Ga. 520, 54 SE (2d) 348, the Supreme Court of Georgia on a similar issue did grant certiorari upon its conclusion that the constitutional question was in fact decided, although the Court of Appeals thought otherwise. *Burke v. State*, 76 Ga. App. 612, 47 SE (2d) 116. It is fair to assume that the Supreme Court of Georgia would have followed its own decision in *Burke v. State*, 205 Ga. 520, 54 SE (2d) 348, had the record on certiorari to it shown a decision of the constitutional question or had that record even been consistent with the conclusion that there had been a decision of the constitutional question.

In the light of its decision in the *Burke* case, *supra*, we believe it may be properly argued that denial of certiorari here represented a decision by the Supreme Court of Georgia that no constitutional issue had been decided by the Court of Appeals.

Subsequent to the Georgia Supreme Court's denial of certiorari, the Court of Appeals amended its record (R.

299) to state expressly that it had considered and decided the constitutional questions. There is substantial doubt as to the jurisdiction of the Court of Appeals so to amend its record. The term of court at which its decision was rendered had theretofore adjourned (Ga. Code, Secs. 24-3801, 24-3509; Appendix p. 26), and with its adjournment respondent insists the Court of Appeals lost all jurisdiction to modify its judgment, except in accordance with the mandate of a reviewing court on certiorari granted. *McRae v. Boykin*, 54 Ga. App. 158, 35 SE (2d) 548, and the cases therein cited. Indeed, the statute law of the State forbids the filing of a motion for rehearing after the adjournment of the term, Ga. Code, Sec. 24-3649, (Appendix p. 25).

Petitioner's motion to the Court of Appeals to amend its record (R. 227) filed on October 22, 1951, after the Supreme Court's denial of certiorari forty days prior thereto (R. 225) is not provided for by either statute or rule of court. Respondent insists that this Court should accord to the Court of Appeals' order of October 22, 1951, purporting to amend its record (R. 229) no greater weight or dignity than it customarily attaches to a certificate that a federal question was decided. (See Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States* (Wolfson and Kurland d.), pp. 138-141 and authorities cited). But in all events the record shows no further effort to obtain review by the Supreme Court of Georgia of the Court of Appeals' decision after its record had been amended in the manner specified.

If this Court sees fit to give any weight or consideration to the Court of Appeals' interpretation of its opinion, then we suggest that the Supreme Court of Georgia should in like manner be allowed, if it chooses, to give similar weight to this interpretative amend-

ment of the record and frame its decision accordingly. Only when this has been done can it be said that the petitioner has obtained or sought to obtain a judgment from the highest court of the State empowered to pass upon the question.

If the right to have review of these constitutional questions by the Supreme Court of Georgia was limited to a discretionary review, this discretionary power of review must be invoked. *Regents of University of Georgia v. Carroll*, 338 U.S. 586. Here, however, review by the Supreme Court of Georgia was not so limited, but an absolute right of appeal to that Court in the first instance is afforded. *Georgia Constitution of 1945*, Article VI, Section II, Paragraph IV. Petitioner wholly failed to invoke this right of direct review. Respondent therefore respectfully insists that writ of certiorari here was improvidently granted and the writ should therefore be dismissed. The jurisdiction of this Court for the foregoing reasons was not properly invoked under 28 USC 1257.

Should this Court reverse and remand the cause to the Court of Appeals of Georgia, its mandate should not require that court to enter a judgment on a constitutional issue which lies outside of its jurisdiction. The judgment of the Supreme Court of Georgia could hardly be reversed because its judgment is not upon the merits of the question here sought to be raised. If the mandate accompanying reversal of the Court of Appeal's judgment provides for transfer to the Supreme Court of Georgia as was done in *Burke v. State*, 205 Ga. 656, 54 SE (2d) 350, then the Supreme Court of Georgia should have an opportunity to pass on the question initially without direction of a reviewing court. Afforded such opportunity, respondent insists

that the court will have no choice but to decide upon adequate non-Federal grounds and affirm the judgment of the trial court.

While Respondent has no desire to force petitioner to pursue his remedy through devious procedure, it nevertheless asserts that under the circumstances of this case the procedure followed by this Court in *Burke v. Georgia* 338 US 941 is most nearly calculated to protect the rights of all parties.

The mischief incident to permitting this constitutional issue to be raised in the appellate court for the first time is illustrated by petitioner's contention that his charges of wilful and knowing use of perjured testimony is undenied. (Petition for certiorari, p. 5). Since the motion for a new trial contained no such allegations, no opportunity was afforded to deny them.

This case does not require or permit a decision upon the constitutionality of Georgia Code Section 110-706 which requires prior conviction of perjury before judgment based on perjured evidence may be set aside.

In *Burke v. State*, 205 Ga. 656, 54 SE (2d) 350, the Supreme Court of Georgia considered a constitutional attack upon Sec. 110-706 of the Code of Georgia (Appendix p. 18). This statute in part provides:

"Any judgment . . . which may have been obtained or entered up, shall be set aside and of no effect if it shall appear that same was entered up in consequence of corrupt and willful purpose; . . . but it shall not be lawful for the court to do so unless the person charged with such perjury shall have been thereof duly convicted . . ."

This Court denied certiorari, *Burke v. Georgia*, 338 US 941, and entered per curiam order expressly stating

that the denial of certiorari was without prejudice to Burke's right to seek appropriate relief in the United States District Court under the doctrine of *Mooney v. Hollohan*, 294 U.S. 103. Petitioner does not here assail the statute in question. Petition for certiorari contains no separate specification of errors designated as such. Treating that portion of the petition which states the questions presented as a specification of errors (Petition, p. 3), there is still no constitutional attack upon this statute. The case at bar thus differs materially from that of *Burke v. Georgia*, 338 U.S. 941 in that here petitioner does not insist that any trial or appellate court of Georgia passed upon the constitutionality of Sec. 110-706 of the Code of Georgia, and does not, of course, assign error on their ruling in that respect.

It is true the Court of Appeals in its order amending record entered October 22, 1951 (R. 229) stated that it considered the Code Section in question and considered the decision of the Supreme Court of Georgia in *Burke v. State*, 205 Ga. 656, 54 SE (2d) 350, and that the statute did not constitute an abridgment of any rights of petitioner guaranteed to him under the Fourteenth Amendment to the Constitution of the United States. We have already commented upon the doubtful character of this "Order Amending Record." In addition, an examination of the motion for rehearing filed in the Court of Appeals and of the application of certiorari filed in the Supreme Court of Georgia, together with the bill of exceptions, clearly show that petitioner has never questioned the constitutionality of Section 110-706 in the manner required by the rule laid down in *Persons v. Lea*, 207 Ga. 384, 61 SE (2d) 832.

The decision of the Court of Appeals of Georgia is not at variance with the doctrine of MOONEY V. HOLLOHAN, 294 U.S. 103.

We believe we have demonstrated that this Court is not here concerned with the constitutionality of Ga. Code, Sec. 110-706 (Appendix p. 18). We deem it appropriate, however, to point out that that statute has been the law of Georgia for many years prior to the decision in *Mooney v. Hollohan* and those other cases of this Court giving similar broad scope to the use of habeas corpus for the purpose of going behind the record in a criminal conviction.

The statute referred to has been a part of Georgia statute law since 1833. The relief afforded by this statute goes well beyond that afforded under this Court's decision in the *Mooney* case. Under this statute all judgments based on willful and corrupt perjury may be set aside, whether or not the party obtaining such judgment had knowledge of the perjury and was a party to it. Sec. 110-706 further declares that judgments obtained by fraud, accident or mistake of the one party unmixed with negligence or fault of the other party may be set aside as a fraud upon the court. Sec. 110-706 affords relief that goes beyond the doctrine of the *Mooney* case. We submit that the required conviction of the perjury is made a condition only to the exercise of these broader rights. The Supreme Court of Georgia has followed this Court's holding in *Powell v. Alabama*, 287 U.S. 45, which was in turn based upon the *Mooney* case, *supra*. The courts of Georgia have never held that any habeas corpus patterned after the *Mooney* decision, Ga. Code, Sec. 110-706, precludes or restricts action in full accord with the decision in the *Mooney* case.

CONCLUSION

Based upon the foregoing argument, respondent respectfully urges that this Court dismiss the writ as improvidently granted. Should this Court not think it appropriate so to dismiss its writ, then we submit that the judgment of the Court of Appeals of Georgia should be affirmed.

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APPENDIX

Georgia Code (1933) 70-204. (6085, 6086; 1088 P.C.) Newly-discovered evidence.—A new trial may be granted in all cases when any material evidence, not merely cumulative or impeaching in its character, but relating to new and material facts, shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the court within the time allowed by law for entertaining a motion for a new trial. (Acts 1853-4, p. 47)

Georgia Code (1933) 70-303. (6092; 1091 P.C.) Motion made after adjournment of court.—In case of a motion for a new trial made after the adjournment of the court, some good reason must be shown why the motion was not made during the term, which shall be judged of by the court. In all such cases, 20 days' notice shall be given to the opposite party. Whenever a motion for a new trial shall have been made at the term of trial in any criminal case and overruled, or when a motion for a new trial has not been made at such term, no motion for a new trial from the same verdict shall be made or received, unless the same is an extraordinary motion or case, and but one such extraordinary motion shall be made or allowed. (Acts 1873, p. 47).

Georgia Code (1933) 110-706. (5961) Judgments obtained by perjury.—Any judgment, verdict, rule, or order of court, which may have been obtained or entered up, shall be set aside and be of no effect, if it shall appear that the same was entered up in consequence of corrupt and wilful perjury; and it shall be the duty of the court in which such verdict, judgment, rule, or order was obtained or entered up to

cause the same to be set aside upon motion and notice to the adverse party; but it shall not be lawful for the said court to do so, unless the person charged with such perjury shall have been thereof duly convicted, and unless it shall appear to the said court that the said verdict, judgment, rule, or order could not have been obtained and entered up without the evidence of such perjured person, saving always to third persons innocent of such perjury the rights which they may lawfully have acquired under such verdict, judgment, rule, or order before the same shall have been actually vacated and set aside. (Acts 1833, Cobb, 804).

Georgia Code 2-3704. (6502) Paragraph IV. Jurisdiction of Supreme Court.—The Supreme Court shall have no original jurisdiction but shall be a court alone for the trial and correction of errors of law from the superior courts and the city courts of Atlanta and Savannah, as existed on August 16, 1916, and such other like courts as have been or may hereafter be established in other cities, in all cases that involve the construction of the Constitution of the State of Georgia or of the United States, or of treaties between the United States and foreign governments; in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question; and, until otherwise provided by law, in all cases respecting title to land; in all equity cases; in all cases which involve the validity of, or the construction of wills; in all cases of conviction of a capitol felony; in all habeas corpus cases; in all cases involving extraordinary remedies; in all divorce and alimony cases, and in all cases certified to it by the Court of Appeals for its determination. It shall also be competent for the Supreme Court to require by certiorari or otherwise any case to be certified to the Supreme Court

from the Court of Appeals for review and determination with the same power and authority as if the case had been carried by writ of error to the Supreme Court. Any case carried to the Supreme Court or to the Court of Appeals, which belongs to the class of which the other court has jurisdiction, shall until otherwise provided by law, be transferred to the other court under such rules as the Supreme Court may prescribe; and the cases so transferred shall be heard and determined by the court which has jurisdiction thereof. The General Assembly may provide for carrying cases or certain classes of cases to the Supreme Court and the Court of Appeals from the trial courts otherwise than by writ of error, and may prescribe conditions as to the right of a party litigant to have his case reviewed by the Supreme Court or Court of Appeals. The Supreme Court shall also have jurisdiction of and shall decide cases transferred to it by the Court of Appeals because of an equal division between the Judges of that Court when sitting as a body for the determination of cases (Codification or Article VI, Sec. II, Paragraph IV of the Constitution of Georgia.

Georgia Code 2-3708. (6506) Paragraph VIII. Court of Appeals.—The Court of Appeals shall consist of the Judges provided therefor by law at the time of the ratification of this amendment, and of such additional Judges as the General Assembly shall from time to time prescribe. All terms of the Judges of the Court of Appeals after the expiration of the terms of the Judges provided for by law at the time of the ratification of this amendment, except unexpired terms, shall continue six years and until their successors are qualified. The times and manner of electing Judges, and the mode of filling a vacancy which causes an un-

expired term, shall be the same as are or may be provided for by the laws relating to the election and appointment of Justices of the Supreme Court. The Court of Appeals shall have jurisdiction for the trial and correction of errors of law from the Superior courts and from the City Courts of Atlanta and Savannah, as they existed on August 19, 1918, and such other like courts as have been or may hereafter be established in other cities in all cases in which such jurisdiction has not been conferred by this Constitution upon the Supreme Court, and in such other cases as may hereafter be prescribed by law; except that where a case is pending in the Court of Appeals and the Court of Appeals desires instruction from the Supreme Court, it may certify the same to the Supreme Court, and thereupon a transcript of the record shall be transmitted to the Supreme Court, which, after having afforded to the parties an opportunity to be heard thereon, shall instruct the Court of Appeals on the question so certified; and the Court of Appeals shall be bound by the instruction so given. But if by reason of equal division of opinion among the Justices of the Supreme Court no such instruction is given, the Court of Appeals may decide the question. The manner of certifying questions to the Supreme Court by the Court of Appeals, and the subsequent proceedings in regard to the same in the Supreme Court, shall be as the Supreme Court shall by its rules prescribe, until otherwise provided by law. No affirmance of the judgment of the court below in cases pending in the Court of Appeals shall result from delay in disposing of questions or cases certified from the Court of Appeals to the Supreme Court, or as to which such certificate has been required by the Supreme Court as hereinbefore provided. All writs of error in the Supreme Court

or the Courts of Appeals, when received by its clerk during a term of the Court and before the docket of the term is by order of the Court closed, shall be entered thereon, and when received at any other time, shall be entered on the docket of the next term; and they shall stand for hearing at the term for which they are so entered, under such rules as the Court may prescribe, until otherwise provided by law. The Court of Appeals shall appoint a clerk and a sheriff of the court. The reporter of the Supreme Court shall be reporter of the Court of Appeals until otherwise provided by law. The laws relating to the Supreme Court as to qualifications and salaries of Judges, the designation of other Judges to preside when members of the Court are disqualified, the powers, duties, salaries, fees and terms of officers, the mode of carrying cases to the Court, the powers, practice, procedure, times of sitting, and costs of the Court, the publication of reports of cases decided therein, and in all other respects, except as otherwise provided in this Constitution or by the laws as to the Court of Appeals at the time of the ratification of this amendment, and until otherwise provided by law, shall apply to the Court of Appeals so far as they can be made to apply. The decisions of the Supreme Court shall bind the Court of Appeals as precedents. The Court of Appeals shall have power to hear and determine cases when sitting in a body, except as may be otherwise provided by the General Assembly. In the event of an equal division of Judges on any case when the Court is sitting as a body, the case shall be immediately transferred to the Supreme Court. (Codification of Article VI, Sec. II, Paragraph VIII of the Constitution of Georgia).

Georgia Code 6-1607. (6203; 1101 P. C.) What appellate court shall decide.—The Supreme Court or the

Court of Appeals shall not decide any question unless it is made by a specific assignment of error in the bill of exceptions, and shall decide any question made by such assignment. (Acts 1882-3, p. 107; 1899, p. 114; 1892, p. 113.)

RULES OF COURT OF APPEALS CODIFIED AS:

Georgia Code 24-3643. Rule 43. Motion for rehearing, when and how made.—No motion for a rehearing will be considered by this Court unless the same is filed in the office of the clerk thereof in duplicate (the original and a carbon copy being sufficient), during the term at which the judgment sought to be reviewed was rendered, and before the remittitur has been forwarded to the clerk of the trial court. Motions must be plainly written or printed upon white paper, not so thin as to be transparent, with ample spacing between the lines. Single-spaced typewritten matter is prohibited. Writing with pen or typewriter must be on only one side of each sheet, and a margin of at least one and one half inches shall be left at the top and on left side of each page. If authority is cited in the motion, it shall be by name of case as well as by volume and page of report.

(a) The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting expiration of the usual period of 10 days, and may otherwise by special order limit the time within which a motion for rehearing may be filed to any period less than 10 days, counsel in such cases to be notified. Unless an extension of time is requested and granted, a motion for rehearing must in any event be filed within 10 days from the rendition of the de-

cision and judgment, regardless of whether the remittitur has been transmitted to the lower court.

(b) No motion for rehearing by the same party after a first motion has been denied will be filed except by special order of the Court, although the clerk may receive any such later motion and deliver the same to the Court for action.

(c) A rehearing will be granted, on motion of the losing party, only when it appears that the Court has overlooked a material fact in the record, a statute, or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority. No motion for a rehearing will be entertained which does not expressly point out what material fact in the record, or controlling statute or decision, has been overlooked by the Court, or what provision of law or controlling authority has been erroneously construed or misapplied.

(d) There shall be attached to the motion a certificate of counsel that upon careful examination of the opinion of the Court he believes that such a fact, statute, or decision, has been overlooked, or that such provision of law or controlling authority has been erroneously construed or misapplied. The motion, when filed, shall show that a copy thereof has been served on opposing counsel who may thereupon file a brief on the questions raised.

(e) If the movant should desire to furnish additional copies of the motion or briefs of law for each of the Judges, the same must be filed with the Clerk of Court of Appeals for delivery to the Judges. Such copies of the motion and brief should not be mailed or sent directly to the Judges.

(f) If, upon the consideration of a motion for a rehearing, this Court should be of the opinion that its judgment as rendered is correct, but that some revision of the opinion would be appropriate, this Court may, in its discretion, and according to its power as heretofore exercised, revise the opinion accordingly, without granting a rehearing; in which event the Court shall so advise the clerk, who shall then promptly notify counsel that alterations have been made.

(g) After motions for rehearing have been disposed of, or in the absence of such motion, the Court or the Judges may revise opinions in accordance with the Code, 6-1606.

Georgia Code 24-3646. Rule 46. Issuance of remittitur on refusal of certiorari or affirmance of judgment by Supreme Court.—Where a judgment of this Court is affirmed by the Supreme Court, or where the writ of certiorari is denied, the remittitur of this Court shall issue immediately upon the filing of the remittitur from the Supreme Court. No entry upon the minutes shall be made.

Georgia Code 26-3647. Rule 47. Duty of clerk on reversal of judgment or giving of instructions by Supreme Court.—Where a judgment of this Court is reversed, or where instruction is given by the Supreme Court, the Clerk, upon receipt of the remittitur, shall bring the matter to the immediate attention of the division which rendered the decision complained of for such further order as may be proper in the case.

Georgia Code 24-3649. Rule 49. Holding remittitur for more than 10 days, effect.—Where a

remittitur has been held for more than 10 days from the date of the judgment consequent upon the filing of a notice of intention to apply for the writ of certiorari, the clerk is prohibited from thereafter filing a motion for a rehearing.

Georgia Code 24-3801. (6099) Time and place of session. The Supreme Court shall sit at the seat of Government. Its terms shall be as follows: January term beginning the first Monday in January; April term beginning the first Monday in April; September term beginning the first Monday in September. Each term shall continue until the business for that term has been disposed of by the Court: Provided, that unless sooner closed by order of the Court the September term shall end on December 20th and the April term shall end on July 31st: Provided further, no judgment, other than judgment on motion for a rehearing, shall be rendered during the last fifteen days of any term. (Act 1845, Cobb, 448. Acts 188405, p. 45; 1935, pp. 161, 162.)

Georgia Code 24-3509. Terms of Court of Appeals. —The terms of the Court of Appeals shall be the same as the terms of the Supreme Court. (Acts 1935, pp. 161, 162.)